Supreme Court, U.S.
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Case Number

Supreme Court of the United States
October, 1996-1997 term

Franklin V. Anderson, Petitioner, Pro Se
v.
State of Mississippi, The Mississippi Bar a.k.a. The Mississippi State Bar and South Mississippi Electric Power Association, a federally financed electric cooperative, Respondents

Petition for Writ of Certiorari to the Supreme Court of Mississippi

Petition for Writ of Certiorari

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103 pp.

Question Presented

In a case involving a known Federal Witness, can the Mississippi Supreme Court, by adopting a bar disciplinary procedural rule, immunize the State of Mississippi, The Mississippi (State) Bar, and a non-governmental corporate bar complainant, from civil claims under Federal and State law, when said bar prosecution, in defiance of Federal authority, is for the malicious purposes of deterring him from performing his duties as an attorney and federal witness; and punishing the attorney for performing those duties and exercising basic rights under the Constitutions of the United States and Mississippi.

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Reference to Published Opinions

To the Petitioner's knowledge, information and belief there have been no published opinions in this case. The Clerk of the Mississippi Supreme Court has stated to Petitioner there will be no publication in the Southern 2d Reporter, which is the official reporter, for the opinion included herein.

Statement of Jurisdiction of the United States Supreme Court

i. The Mississippi Supreme Court entered final judgment July 25, 1996.

ii. No motion for rehearing has been filed by Petitioner nor served to Petitioner by any other party.

iii. Rule 12.5 does not apply: This is an original petition.

iv. This Court has jurisdiction to hear this case under 28 U.S.C.A. § 1257.

v. 28 U.S.C.A. § 2403(a and b) may apply. Notice by copy hereof has been sent certified mail return receipt requested to:

Solicitor General of the United States
Room 5614
10th St. and Constitution Ave., N.W.
Washington, DC 20530

The State of Mississippi is a party below and, notwithstanding its failure to serve Petitioner with any pleadings whatever, notice by copy hereof has been sent certified mail return receipt requested to

Attorney General, State of Mississippi
P.O. Box 220
Jackson, MS 39205

CONSTITUTIONAL PROVISIONS

Article 1 Section 8, Clause 3, United States Constitution

The Congress shall have the power . . .;

To regulate commerce with foreign nations, and among the several states, and with the Indian Tribes;

Article 6, Clause 2, United States Constitution

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges of every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding.

Amendment 1, United States Constitution

Congress shall make no law . . .abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment 5, United States Constitution

No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 14, Section 1, United States Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Mississippi Constitution (1890), Section 13

The freedom of speech and of the press shall be held sacred;. . .

Mississippi Constitution (1890), Section 24

All courts shall be open; and every person, for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law; and the administration of justice shall not be subject to sale, delay or denial.

Mississippi Constitution (1890), Section 25

No person may be debarred from prosecuting or defending any civil cause for or against himself, before any tribunal in the state, by him or herself, or counsel, or both.

STATUTORY PROVISIONS

15 U.S.C.A. § 1 (1996) *Trusts, etc., in restraint of trade illegal; penalty*

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

18 U.S.C.A. § 2 (1996) *Principals*

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C.A. § 4 (1996) *Misprision of felony*

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall

be fined under this title or imprisoned not more than three years, or both.

18 U.S.C.A. § 1001 (1996) *Statements or entries generally*
Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or cover up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

18 U.S.C.A. § 1503 (1996). *Influencing or injuring officer or juror generally*
(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b).
(b) The punishment for an offense under this section is--
(1) in the case of a killing, the punishment provided in sections 1111 and 1112
(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years, a fine under this title, or both; and

(3) in any other case, imprisonment for not more than 10 years, a fine under this title, or both.

18 U.S.C.A. § 1951 (1996) *Interference with commerce by threats or violence*

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section--

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce with the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

18 U.S.C.A. § 1961 (1996) *Definitions*

As used in this chapter--

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a

controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: . . . section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), . . . section 1503 (relating to obstruction of justice), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), . . .;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means . . .;

(7) "racketeering investigator" means . . .;

(8) "racketeering investigation" means . . .;

(9) "documentary material" includes any book, paper, document, record, recording, or other material;

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the

powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

18 U.S.C.A. § 1962 (1996) *Prohibited activities*

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. . . .

(b) It shall be unlawful for any person through a pattern of racketeering activity . . . to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . .

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C.A. § 1964 (1996) *Civil remedies*

(A) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from

engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, . . .

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

42 U.S.C.A. § 1985 (1996) *Conspiracy to interfere with civil rights*

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and

truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons with such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

Rule 55, Mississippi Rules of Civil Procedure. *Default*

(a) *Entry.* When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) *Judgment.* In all cases the party entitled to a judgment by default shall apply to the court therefor. If the party against whom judgment by default is sought has appeared in the action, he (or if appearing by representative, his representative) shall be served with written notice of the application for judgment at least three days prior to the hearing of such application; however, judgment by default may be entered by the court on the day the case is set for trial without such three days' notice. If in order to enable the court to enter judgment or to carry it into effect it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearing with or without a jury, in the court's discretion, or order such references as it deems necessary and proper. . .

* * *

Rule 14, Mississippi Rules of Discipline

(a) All complaints filed, statements made and documents or other tangible things produced hereto shall be absolutely privileged, and no civil suit predicated therein may be instituted, and each person, firm, association or legal entity filing such a complaint shall be immune from any civil suit pending thereon. The officers of the Bar and all of the disciplinary agencies and their assistants, staff, employees and receivers shall be immune from civil suit for any conduct arising out of the performance of their official duties. Every person shall be immune from civil suit for all evidence or testimony given or submitted in the course of any investigation, investigatory hearing, formal hearing or review proceedings held and conducted under these rules.

(b) In an action separate and distinct from the disciplinary proceedings, the attorney may, by petition filed with the clerk of

the Court, seek a finding by the Court or its special master in the issue of malicious prosecution, abuse of process, malicious publication to persons not authorized to receive information pertaining to matters arising under these rules, slander or libel. If the Court finds or approves a finding by a special master that there appears to or may have been malicious prosecution, abuse of process, defamation of character, slander or libel, the court shall enter its order granting the right to sue notwithstanding the immunity provided above. Such finding and right to sue shall constitute only a right to commence an action, not an adjudication as to whether or not there was, in fact, a waiver of the immunity provided above, and not a finding upon merits of any action which the attorney may thereafter institute. No action shall be instituted prior to the issuance of the order herein provided. The statute of limitations provided by statute for applicable causes shall commence on the date the order is entered.

DR 7-103, Mississippi Code of Professional Responsibility (MCPR)

Performing the Duty of Public Prosecutor or Other Government Lawyer

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

DR 7-106(C)(1), MCPR *Trial Conduct*

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

DR 7-109 MCPR *Contact with Witnesses*

(A) A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce.

(B) A lawyer shall not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

DR 7-102(B) MCPR

A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

Rule 501. Mississippi Rules of Evidence

Privileges Recognized Only As Provided

Except as otherwise provided by the United States Constitution, by these rules, or by other rules applicable in the courts of this state to which these rules apply, no person has a privilege to:

(1) Refuse to be a witness;

(2) Refuse to disclose any matter;

(3) Refuse to produce any object or writing; or

(4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

Rule 502. Mississippi Rules of Evidence

Lawyer-Client Privilege

* * *

(b) General Rule of Privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client. . .

* * *

(d) Exceptions. There is no privilege under this rule:

(1) Furtherance of Crime or Fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

* * *

(3) Breach of Duty by a Lawyer or Client. As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer;

FACTUAL BACKGROUND

Petitioner was admitted to practice in Alabama courts September 29, 1980. On November 17, 1980, he was employed as Staff Attorney for South Mississippi Electric Power Association (SMEPA). He was admitted to practice in Mississippi courts May 22, 1981. Within three months of his employment a series of incidents commenced which demonstrated the habit of SMEPA's General Manager to interfere with and attempt to dominate the independent judgment of all professional employees, including engineers, accountants, and Petitioner, the only attorney on the employed professional staff. Record Below, Petitioner's Verified Motions etc.,Tab F pages 1 through 16, Tab I, pages 89-166.

In September, 1982, Petitioner returned to work after his wedding to be presented with three versions of the same memorandum drafted by the Internal Auditor, a Certified Public Accountant with approximately 14 years experience: Version 1 was the original report; version 2 had five paragraphs crossed out and written orders for their removal; version 3 was the accepted version which appeared in the General Manager's file for inspection by federal auditors and engineering representatives, with the paragraphs missing. Record Below, Petitioner's Verified Motions etc., Tab D, Exhibit C7 pages 10-12, (first page of each version). The eliminated paragraphs described coal contract violations, resulting in projected overpayments by SMEPA to Sandy Fork Mining Company, with a present value of $200 million over the 20 year contract. Record Below. Petitioner's Verified Motions etc, Tab I, pages 95-101.

Petitioner informed the General Manager that such management interference was contrary to the duties of the Internal Auditor, whereupon the General Manager directed Petitioner to pressure the Internal Auditor into concealing material information concerning the Sandy Fork Mining Company coal contract from corporate directors and federal authority. *Cf*, 18 U.S.C.A. § 1001. Petitioner declined. In November, 1983, after refusing an offer, made on behalf of the manager, of "anything you want, anything at all, to get on the team," Petitioner was fired; given a board approved letter of reference and time to find other employment. Record Below, Petitioner's Verified Motions etc., Tab D, Exhibit C7, page 18.

On January 16, 1984, Petitioner, a degreed Mechanical Engineer with five years engineering experience prior to attending law school, was hired as System Engineer[1], by Dixie Electric Power Association, a distribution cooperative which is part owner of SMEPA. In August, 1984, Petitioner was warned by a director of SMEPA that he was going to be fired by Dixie for his continued contact with the SMEPA Internal Auditor and federal representatives. Record Below, Petitioner's Verified Motions etc., Tab I Page 149. On December 14, 1984, Petitioner was terminated. Dixie has given conflicting explanations for the termination. Petitioner was unemployed and unable to obtain any employment until July, 1986.

PROCEDURAL BACKGROUND

SMEPA filed suit, seeking $80,000,000 damages and cancellation of the remaining term of the coal contract, against Sandy Fork Mining Company in the United States District Court for the Southern District of Mississippi, Hattiesburg Division approximately December 13, 1985. Record Below, Petitioner's Verified Motions etc., Tab D Exhibit C7 page 6. Sandy Fork Mining Company filed suit against SMEPA in the United States District Court for the Eastern District of Kentucky, London Division contemporaneously.

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The Mississippi (State) Bar has erroneously described Petitioner's title and function at Dixie as "a systems engineer", notwithstanding specific knowledge of its error. Record Below, Petitioner's Verified Motion etc., Transcript of Depositions of Henry Thomas and Franklin V. Anderson May 7, 1987, Tab I page 131. The term "systems engineer" does not appear in the Dictionary of Occupational Titles, United States Department of Labor, 4th Ed (1991). The nearest generally recognized description is that of "computer systems engineer", also described as a "computer systems hardware analyst", 033.167-010. Petitioner's function at Dixie was that described as "Electrical Engineer, Power System", 003.167-018, or in the alternative "power system engineer". Reference to Petitioner, as "a systems engineer" when his title was "System Engineer" is as inaccurate as calling a lawyer a secretary.

In May, 1986, Petitioner employed a private investigator who contacted management representatives of SMEPA and Dixie and received bad employment references concerning the Petitioner's conduct. Petitioner filed suit June 12, 1986, in the Circuit Court of Forrest County Mississippi against SMEPA, Dixie, the previous General Manager of SMEPA and the manager of Dixie individually. June 16, 1986, an *ex parte* order was entered by the Circuit Court of Forrest County, which was followed by a preliminary injunction June 24, 1986, which was made permanent July 7, 1986. Appendix 10-13. That Circuit Court Order found, among other things, that Petitioner had material information in a pending Federal lawsuit, and had wrongfully obtained and disclosed that information by attaching it as exhibits and describing it in his lawsuit. The affiant obtaining all those orders on behalf of the defendants was Henry Thomas, who replaced George Taylor as General Manager of SMEPA.

Among other things the Circuit Court order prohibited Petitioner from speaking to any person about his case, specifically including federal parties in the pending federal litigation, the Mississippi State Bar, and any other attorney, including an additional personal attorney, or prospective witness. The same day, July 7, 1986, that the Circuit Court injunction was made permanent, the Mississippi State Bar stamped "Received" a bar complaint against Petitioner signed July 1, 1986, by Henry Thomas. Appendix 14.

At the same time Henry Thomas was taking these actions in state courts, he filed three affidavits in federal courts in Mississippi and Kentucky identifying Petitioner among other witnesses in the pending suits between SMEPA and Sandy Fork. SMEPA wanted the cases heard in Hattiesburg and used a claim of necessary witnesses who would be unavailable in Kentucky to support its argument.

Petitioner was served July 17, 1986, with the bar complaint and informed the General Counsel, Michael B. Martz, of the Circuit Court injunction which prohibited his answer. Record Below, Petitioner's Verified Motions etc., Letter dated September 13, 1986, stamped "Received" by the Mississippi State Bar, September 15, 1986, Tab D Exhibit C12.Petitioner obtained after a search of federal court records one of the affidavits of Henry Thomas, which

was presented with the bar complaint, and a request of Petitioner's Co-counsel to withdraw, to the Circuit Court of Forrest County in a vain attempt to be relieved of the injunction.

Consistent with duties under Mississippi Code of Professional Responsibility DR 7-102(b) and 18 U.S.C.A. § 4, Petitioner informed Chief District Judge Dan Russell, who was hearing the federal matter in Hattiesburg. Judge Russell directed Petitioner to report to the Federal Bureau of Investigation and deliver all supporting documentation. Petitioner complied. Record Below, Petitioner's Verified Motions etc., Letter dated August 15, 1986, from Petitioner hand delivered to the Federal Bureau of Investigation, San Francisco, California, Tab R, Exhibit A21 pages 1-3. Judge Russell then *sua sponte* transferred the pending SMEPA federal lawsuit to the United States District Court for the Eastern District of Kentucky, London Division for consolidation. The United States Attorney for the Southern District of Mississippi refused to act.

In September, 1986, a settlement conference was called by the Circuit Court in Hattiesburg. Petitioner was working in a temporary position in San Francisco, his first employment in twenty months. Rather than lose his job by returning to Hattiesburg, Petitioner settled the case. The transcribed tape recorded interstate telephone negotiations describe the alleged extortionate circumstances. Record Below, Petitioner's Verified Motions etc., Tab G. Petitioner was assured that all controversy would end. The bar continued its prosecutorial inquiry, its Assistant General Counsel stating that the Mutual Covenant Not to Sue, Appendix 15, which did not include the State of Mississippi or the Mississippi State Bar as parties, "did not apply to these proceedings". Record Below, Petitioner's Verified Motions, Tab D Exhibit C10 page 2.

Petitioner sought and was denied a *writ of prohibition* from the Mississippi Supreme Court, again determining *inter alia* the Mutual Covenant Not to Sue does not apply. Appendix 27. Record Below, Petitioner's Verified Motions, Tab P, Exhibit A17 Page 17. The Mississippi State Bar filed formal charges 454 days after the complaint was filed. Appendix 34. Petitioner obtained a protective order from the United States District Court for the Eastern District of Kentucky. Appendix 28. SMEPA and Sandy Fork immediately settled their federal lawsuit, whereupon the Mississippi State Bar

moved to reconsider the protective order. The federal protective order was vacated. Appendix 29. The order vacating protection of the Petitioner, the only person identified to, and determined by, the court as being subject to illegal influence on the ground of conclusion of the case is in stark contrast and contradiction to the Agreed Order wherein the Court imposed a confidentiality agreement on all parties and witnesses that by its terms would continue after the end of all litigation and appeals. Appendix 25.

The bar prosecution continued. Petitioner was granted complete exoneration through summary judgment of a Complaint Tribunal appointed by the Mississippi Supreme Court. Appendix 37.

In January, 1993, Petitioner filed suit under federal law in the Northern District of Alabama, which was transferred to the Southern District of Mississippi, dismissed for failure to comply with Rule 14, Appendix 40, and, further, determined that SMEPA was free to "sue" Petitioner through a fraudulent bar complaint while Petitioner was prevented from filing suit by the Mutual Covenant. Appendix 46.

November 27, 1995, Petitioner filed a Verified Motion for Permission to Sue and for other relief, Appendix 48, which raised all federal issues herein presented. Petitioner also filed a Verified Motion for Entry of Default and Judgment by Default after 60 days of no response being filed or served by any person. Rule 55 Mississippi Rules of Civil Procedure, Appendix 66. All motions were denied, except a motion to unseal the records in the Forrest County Circuit Court, by the Mississipp Supreme Court July 25, 1996. Appendix 1. Petitioner challengesthe Mississippi Supreme Court's authority to deny relief for clains under federal law that should be available to a federal witness, whether or not an attorney.

ARGUMENT

The Supreme Court of Mississippi has decided that a Federal Witness can be deprived of redress for Federal Law violations through a bar disciplinary rule, in conflict with applicable decisions of the United States Supreme Court.

IMMUNITY.

The Supreme Court of Mississippi cannot enforce any rule of law, regardless of the origin of the rule, that interferes with an individual's rights under the United States Constitution. *NAACP v.*

Claiborne Hdw, 458 U.S. 886, 916 (1983), citing *New York Times v. Sullivan*, 376 U.S. 254, 265 (1964).

While a state has extensive authority to regulate attorneys, that authority does not extend to violation of the individual attorney's rights under the United States Constitution. *Brotherhood of Railway Trainmen v. State Bar of Virginia*, 377 U.S. 1 (1963).

When a state bar uses its disciplinary authority over attorneys to coerce violation of federal law enacted under the Commerce Clause, Article 1 Section 8 Clause 3, it waives sovereign immunity and becomes liable for damages. *Goldfarb v. State Bar of Virginia*, 421 U.S. 657 (1975).

Congress can abrogate state sovereign immunity under the Commerce Clause, Article 1 Section 8 Clause 3. *Pennsylvania v. Union Gas Co.*, 491 U.S. 1 (1989). The *Racketeer Influenced Corrupt Organizations Act (RICO)*, 18 U.S.C. 1961 *et seq*, is a Commerce Clause enactment. *United States v. Vignola*, 464 F.Supp 1091 (D.C.Pa. 1979), *aff'd*, 605 F.2d 1199 (3rd Cir. 1979), *cert. denied*, 444 U.S. 1072 (1980). *RICO*, 18 U.S.C. 1964(c), affords civil relief for violations of numerous predicate acts, including Obstruction of Justice, 18 U.S.C. 1503, and the Hobbs Act, 18 U.S.C. 1951. *Sedima v. Imrex*, 473 U.S. 479 (1985).

> Sovereign immunity will not protect a political subdivision when there has been a violation by the subdivision of an individual's constitutional rights. . . [T]he courts are open to provide a remedy against the sovereign or any of its subdivisions. Otherwise . . . the Mississippi Constitution would be meaningless. . . . *Tucker v. Hinds County*, 558 So.2d 869, 872 (Miss. 1990).
>
> Every Justice of this Court, as a pre-condition to assuming office, takes an oath to discharge his or her duties "agreeably to the Constitution of the United States.". . . The set of the Mississippi Code in every Justice's Office contains in Volume One the self-same Constitution of the United States, one provision of which is commonly known as the Supremacy Clause, Art. VI, 2 . . . The Constitution of the United States is a part of that organic body of law which is applied in the courts of this state. . . . It is among the laws we have applied even when

we have found its strictures odious. . . .We have had on occasion, because of a provision of this basic federal law which is applied in our courts, to convert a state statute into one actually providing the opposite of what its language required, in order to eliminate an unconstitutional feature of that statute. . . . It is a part--the supreme part of our law. *Jones by Jones v. Harris*, 460 So.2d 120, 123 (Miss. 1984)(citations omitted).

FEDERAL WITNESS DUTIES AND PROTECTION UNDER THE UNITED STATES CONSTITUTION

It is the duty and the right, not only of every peace officer of the United States, but of every citizen, to assist in prosecuting, and in securing the punishment of, any breach of the peace of the United States. It is the right, as well as the duty, of every citizen, when called upon by the proper officer, to act as part of the posse comitatus in upholding the laws of his country. It is likewise his right and his duty to communicate to the executive officers any information which he has of the commission of an offense against those laws; and such information, given by a private citizen, is a privileged and confidential communication, for which no action of libel or slander will lie, and the disclosure of which cannot be compelled without the assent of the government. . .

The right of a citizen informing of a violation of law, like the right of a prisoner in custody upon a charge of such violation, to be protected against lawless violence, does not depend upon any of the amendments to the constitution, but arises out of the creation and establishment by the constitution itself of a national government, paramount and supreme within its sphere of action. . . . Both are, within the concise definition of the chief justice in an earlier case, "privileges and immunities arising out of the nature and essential character of the national government, and granted or secured by the constitution of the United States. . . ."

The right of the private citizen who assists in putting in motion the course of justice, and the right of the officers concerned in the administration of justice, stand

upon the same ground, just as do the rights of citizens voting and officers elected. . . . The power in either case arises out of the circumstances that the function in which the party is engaged, or the right which he is about to exercise, is dependent on the laws of the United States. In both cases it is the duty of government to see that he may exercise this right freely, and to protect him from violence while so doing, or on account of so doing. This duty does not arise solely from the interest of the party concerned, but from the necessity of the government itself, that its service shall be free from the adverse influence of force and fraud practiced on its agents. . . .

The necessary conclusion is that it is the right of every private citizen of the United States to inform a marshal of the United States or his deputy of a violation of the internal revenue laws of the United States; that this right is secured to the citizen by the constitution of the United States; and that a conspiracy to injure, oppress, threaten, or intimidate him in the free exercise or enjoyment of this right, or because of his having exercised it, is punishable . . *In Re Quarles*, 158 U.S. 532, 535-538 (1895)

Further United States Supreme Court opinions amplifying *Quarles* are:

1. *In re Debs*, 158 U.S. 564, 579 (1895) (This power to enforce its laws and execute its functions in all places does not derogate from the power of the state to execute its laws at the same time and in the same places. The one does not exclude the other, except where both cannot be executed at the same time.)

2. *Twining v. New Jersey*, 211 U.S. 78, 97 (1908) (In a state prosecution for criminal conduct: privileges and immunities are such as arise out of the nature and essential character of the national government, or are specifically secured to all citizens or persons by the Constitution of the United States, and include the right to inform United States authorities of violations of law.)

3. *Rakes v. United States*, 212 U.S. 55, 58 (1909) (Constitutionality of statute protecting persons in free exercise or

enjoyment of any right or privilege secured by the Constitution or laws of the United States is "long put to rest".)

4. *Colgate v. Harvey*, 296 U.S. 404, 429 (1935) (Under the 14th Amendment the simple inquiry is whether the privilege claimed is one which arises in virtue of national citizenship: If the privilege be of that character, no state can abridge it.)

5. *Ashton v. Cameron County*, 298 U.S. 513 (1936) (The federal and state government cannot act in concert through legislation to abridge the privileges and immunities of their citizens.)

6. *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 527 (1939) (Uncontrolled suppression of the privilege of free expression cannot be allowed under the guise of the official duty to maintain order in connection with the exercise of the privilege.)

7. *United States v. Classic*, 313 U.S. 299 (1941) (A state cannot by legislation interfere with the rights secured by the federal Constitution; and those rights, including communication with lawful authority, which arise prior to the 14th and 15th Amendments, are secured not only against the actions of the state, but also individuals.)

8. *Screws v. United States*, 325 U.S. 91, 123 (1945) (If it is valid to assure the rights "plainly and directly" secured by the other provisions, it is equally valid to protect those "plainly and directly" secured by the Fourteenth Amendment, including the expressly guaranteed rights not to be deprived of life, liberty or property without due process of law.)

9. *United States v. Williams*, 341 U.S. 70 (1951) (The right to inform federal authorities of illegal conduct is protected against individual as well as state action.)

10. *Collins v. Hardyman*, 341 U.S. 651 (1951) (The Fourteenth Amendment in isolation does not secure individuals against the wrongs of other individuals; only against the wrongs of the states.)

11. *Roviaro v. United States*, 353 U.S. 53, 59 (1957) (The purpose of the [informer's] privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials, and,

by preserving their anonymity, encourages them to perform that obligation.)

12. *United States v. Guest*, 383 U.S. 745, 771 (1966) (The Bill of Rights, designed to protect personal liberties, was directed at rights against governmental authority, not other individuals; there is a narrow range of rights protected against individuals which have been read into the Constitution, including the right of federal citizenship to inform federal officials of violations of federal law.)

13. *United States v. Price*, 383 U.S. 787, 794 (1966) (Private persons, jointly engaged with state officials in prohibited action, are acting "under color of law" for the purposes of the statute. To act "under color" does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents.)

14. *McCray v. Illinois*, 386 U.S. 300, 309 (1967) (Revelation of an informant's identity ends his usefulness to the government and discourages others from aiding in law enforcement.)

15. *Adickes v. S.H. Kress*, 398 U.S. 144, 152 (1970) (In an action against private defendants who complained to law enforcement authority in order to violate the civil rights of the accused, the complaint in retaliation is not subject to informant's immunity and privilege, even though the informant's right is otherwise strongly protected.)

16. *Oregon v. Mitchell*, 400 U.S. 112, 149 (1970) (The right to vote in federal elections, as the right to inform federal authority, is a privilege and immunity of national citizenship.)

17. *Griffin v. Breckenridge*, 403 U.S. 88, 104 (1971) (That [42 U.S.C.] § 1985(3) reaches private conspiracies to deprive others of legal rights can, of itself, cause no doubt of its constitutionality. It has long been settled that 18 U.S.C. § 241, a criminal statute of far broader phrasing . . . reaches purely private conspiracies and is constitutional.)

18. *Lindsey v. Normet*, 405 U.S. 56, 88 (1972) (We have held that the right to complain to public authorities is constitutionally protected.)

19. *Sugarman v. Dougall*, 413 U.S. 634, 653 (1973) (There are certain attributes peculiar to the status of federal citizen which cannot be limited by the state.)

20. *United States v. New York Telephone Company*, 434 U.S. 159, 175, *footnote 24* (1977) (The conviction that private citizens have a duty to provide assistance to law enforcement officials when it is required is by no means foreign to our traditions: As in the days of Edward I, the citizenry may be called upon to enforce the justice of the state, not faintly and with lagging steps, but honestly and bravely and with whatever implements and facilities are convenient and at hand. It is the duty of every citizen to assist in prosecuting, and in securing the punishment of, any breach of the peace of the United States.)

21. *Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600 (1979) (Actions for deprivation of rights are not based on the statutes allowing them, but on the right of the citizen to protection. All rights, whether created by treaty, by statute, or by regulation are "secured" by the Supremacy Clause.)

22. *Great American Federal Savings & Loan v. Novotny*, 442 U.S. 366 (1979) (Federal protection encompasses the right to communicate with law enforcement authority.)

23. *Sure-Tan, Inc. v. National Labor Relations Board*, 467 U.S. 883 (1984) (A protected informant cannot be attacked by his subject informing upon him in retaliation: If the reason asserted for making the report is pretextual, the fact that the action taken is legal or even praiseworthy is not controlling.)

OBSTRUCTION OF JUSTICE

A federal witness is any person who has material information, and either expects to, is expected to, or does appear as a witness or party in a federal proceeding, whether of his own volition or at the instance of another party, or by subpoena from the court. *Berra v. United States*, 221 F.2d 590, 596 (8th Cir. 1955), *aff'd*, 351 U.S. 131 (1955). 18 U.S.C. § 1503 protects federal witnesses before, during and after the proceeding in which they are identified. *United States v. Verra*, 203 F.Supp 87 (S.D.N.Y. 1962). Protection under 18 U.S.C. § 1503 applies whether or not the witness actually testifies. *Falk v. United States*, 370 F.2d 472, 476 (9th Cir. 1966), *cert. denied*, 387 U.S. 926 (1966). The changes made in 18 U.S.C. § 1503 by the Victims and Witnesses Protection Act of 1982 did not legalize previously prohibited conduct. *United States v. Wesley*, 748 F.2d 962 (5th Cir. 1984), *cert. denied 471*

U.S. 1130 (1985), *see also*, *United States v. Brand*, 775 F.2d 1460 (11th Cir. 1985). Hiring an attorney to induce a federal witness to claim privilege in a federal court proceeding is an unlawful obstruction of justice under 18 U.S.C. § 1503. *United States v. Ciofi*, 493 F.2d 1111 (2nd Cir. 1974), *cert. denied*, 419 U.S. 917 (1974), *see also*, *Cole v. United States*, 329 F.2d 437, 440 (9th Cir. 1964), *cert. denied*, 377 U.S. 954 (1964).

As displayed in the Orders of the Circuit Court of Forrest County, Mississippi, Appendix 10-20, South Mississippi Electric Power Association not only hired attorneys, it also invoked the power of the State of Mississippi through the Circuit Court of Forrest County and the bar disciplinary process of the Mississippi Supreme Court to force the false claim of privilege in an ongoing federal court proceeding. Invoking the judicial power and disciplinary authority of the State of Mississippi to harass, oppress and intimidate the Petitioner herein, has been determined by the United States District Court for the Eastern District of Kentucky to be an unlawful obstruction of justice. Appendix 28.

At the same time South Mississippi Electric Power Association invoked the power of the State of Mississippi to silence Petitioner's testimony, it also named Petitioner *3 times* in Federal Court proceedings a person "who will necessarily testify", and in so doing waived any claim it might have had to attorney-client privilege. *Drimmer v. Appleton*, 628 F.Supp 1249, 1251 (S.D.N.Y. 1986). Record Below, Petitioner's Verified Motions etc., Tab D Section C8, Tab F Section [A]2A and B. Once privilege has been waived, it can never be reclaimed. *United States v. Krasnov*, 143 F.Supp 184 (E.D. Pa 1956), *aff'd sub nom, Oppenheimer v. United States*, 355 U.S. 5 (1957).

To compound the deception perpetrated, after obtaining state court orders purportedly silencing the Petitioner, while maintaining in Federal court that he would testify, South Mississippi Electric Power Association entered an Agreed Order of Confidentiality, which by its terms bound the parties, all attorneys, all other persons involved in preparation or presentation of the case, and all "confidential" information obtained in discovery, beyond the end of all litigation, wherein SMEPA and Sandy Fork, its opponent before the Federal Court, agreed to refrain from calling any witness,

such as the Petitioner herein, who would not be bound by a "confidentiality agreement". Appendix 21.

Notwithstanding the assertions of the Mississippi Supreme Court's Complaint Tribunal that the Mississippi (State) Bar was not properly joined as a party before the United States District Court for the Eastern District of Kentucky; and that the Federal Court in Kentucky had no jurisdiction over persons in Mississippi, Appendix 33; *and the voluntary appearance of the Mississippi (State) Bar, Record Below, Petitioners Verified Motions, Tabs K and N:* a Federal Court has nationwide jurisdiction and can impose its injunctive orders on any person who has knowledge of the order, whether or not that person is a party thereto, *Reich v. United States*, 239 F.2d 134 (1st Cir. 1956) *cert. denied* 352 U.S. 1004 (1956). Although the protective order subsequent to the voluntary federal court appearance of the Mississippi (State) Bar was vacated on the bar's Motion to Reconsider, such action does not disturb the *res judicata and collateral estoppel* of the original protective order, *Elgin v. Barrett*, 213 F.2d 776 (5th Cir. 1954), *see also, Polites v. United States*, 364 U.S. 426 (1960).

The Mississippi Supreme Court was fully aware of the Petitioner's status as a federal witness and authorized the Mississippi (State) Bar to proceed by refusing to issue a *writ of prohibition*. Appendix 27. Record Below, Tab P Page 5 *et seq.*

This refusal is in direct conflict with the Mississippi Supreme Court's holding in *Thornton v. Breland*, 441 So.2d 1348 (Miss. 1983), that an injunction of a Circuit Court which prohibited an attorney from presenting a case therein violated both the attorney's and the client's constitutional rights. Petitioner respectfully contends that there should be no Constitutional distinction between a case where an attorney is representing the interest of his client, and where he is representing his own; This Court has written numerous times that a lawyer does not surrender his individual Constitutional rights upon taking the oath of an attorney. *See, e.g., Brotherhood of Railway Trainmen v. State Bar of Virginia*, 377 U.S. 1 (1963). This Court has further directed that every lawyer's duty of zealous advocacy of the client's interest is limited by an equally solemn duty as an officer of the court to uphold the law and standards of professional conduct. *Nix v. Whiteside*, 475 U.S. 157 (1986).

CONCLUSION

If the ruling of the Mississippi Supreme Court is allowed to stand, every lawyer in the United States of America will be subject to conflicting duties of secrecy and required disclosure; and deprived, by the simple filing of any groundless bar complaint, of 14th Amendment Equal Protection, to petition government for the redress of grievances under the 1st Amendment, for protection of vital 5th Amendment property rights of reputation and practice of a lawful profession afforded to every other citizen by the United States Constitution as well as Sections 13, 24, and 25 of the Mississippi Constitution (1890). Appendix 8.

Under Federal law, any person who is aware of the commission of a federal felony, and who does the slightest affirmative act to further or conceal that felony is subject to criminal penalties. 18 U.S.C. § 4, *United States v. Perlstein*, 126 F.2d 789 (3rd Cir. 1942), *cert. denied*, 439 U.S. 1127 (1942). Under DR 7-102(b) the Mississippi Supreme Court required lawyers to inform the affected person or tribunal of the planned or ongoing fraud perpetrated by an unrelenting client or third party. Yet with the same claimed disciplinary authority, the Mississippi Supreme Court enables the absolutely immune use of its state power to retaliate for the performance of duties that it imposes, and which this Court has identified as existing from "time immemorial". Petitioner respectfully submits that where the law imposes a duty it must equally afford absolute protection when that duty is lawfully performed. There is no excuse to allow the fraud and corruption displayed in this record to escape redress before an impartial and disinterested forum, which did not approve or participate in the original wrong. Appendix 49 paragraph 9, 63 paragraph 37.

> **The privilege takes flight if the relation is abused. A client who consults an attorney for advice that will serve him in the commission of a fraud will have no help in the law. He must let the truth be told. *Clark v. United States*, 289 U.S. 1, 15 (1933).**

Filed July 25, 1996

In The Supreme Court of Mississippi

No. 95-BD-01230

IN RE: PETITION OF ATTORNEY GG
FOR RIGHT TO FILE A CIVIL SUIT

ORDER

This matter came before the Court sitting *en banc* on certain motions filed by Attorney GG, including a motion for permission to sue under Rule 14 of the Rules of Discipline for the Mississippi State Bar; a motion to determine that Rule 14 is unconstitutional; a motion to remove seal; a motion for change of venue; a motion to compel; and a motion for entry of default filed by Attorney GG. Also before the Court is a motion to dismiss Attorney GG's motions filed by the Mississippi Bar.

In his motion for permission to sue, Attorney GG requests that this Court grant him permission to file civil suit against the Mississippi Bar and against South Mississippi Electric Power Association (SMEPA) pursuant to Rule 14 of the Rules of Discipline for the Mississippi State Bar. The Court finds that this motion is not well taken and should be denied.

In his motion to determine that Rule 14 is unconstitutional, Attorney GG requests that the Court declare that Rule 14 of the Rules of Discipline for the Mississippi State Bar violates the United States Constitution and the Mississippi Constitution of 1890. The Court finds that this motion is not well taken and should be denied.

In his motion to remove seal, Attorney GG requests that this Court direct the circuit court of Forrest County to remove a seal placed on a case in which Attorney GG was a litigant. The Court finds that this motion is well taken and should be granted.

In his motion for change of venue, Attorney GG seeks permission to file suit in Alabama. The Court finds that this motion is not well taken and should be denied.

In his motion to compel, Attorney GG requests that this Court compel production of certain documents by the Mississippi Bar. The Court finds that this motion is not well taken and should be denied.

In his motion for entry of default, Attorney GG requests that this Court enter a default judgment in his favor on all motions pending before the Court. The Court finds that this motion is not well taken and should be denied.

In its motion to dismiss Attorney GG's motions, the Mississippi Bar requests that this Court dismiss or deny all motions filed by Attorney GG against the Bar, or to deny Attorney GG's request for permission to sue the Mississippi Bar. The Court finds that this motion may be dismissed as moot.

THEREFORE, IT IS ORDERED that Attorney GG's motion for permission to sue be and hereby is denied.

IT IS FURTHER ORDERED that Attorney GG's motion to determine that Rule 14 is unconstitutional be and hereby is denied.

IT IS FURTHER ORDERED that Attorney GG's motion to remove seal be and hereby is granted.

IT IS FURTHER ORDERED that Attorney GG's motion for change of venue be and hereby is denied.

IT IS FURTHER ORDERED that Attorney GG's motion to compel be and hereby is denied.

IT IS FURTHER ORDERED that Attorney GG's motion for entry of default be and hereby is denied.

IT IS FURTHER ORDERED that the Mississippi Bar's motion to dismiss Attorney GG's motions be and hereby is dismissed as moot.

SO ORDERED, this the 23rd day of July, 1996

/s/signature

FOR THE COURT

ON MOTION FOR PERMISSION TO SUE THE MISSISSIPPI BAR: ALL JUSTICES TO DENY

ON MOTION TO SUE SMEPA: LEE,C.J., BANKS AND MCRAE, JJ WOULD GRANT.

ON MOTION TO DETERMINE THAT RULE 14 IS UNCONSTITUTIONAL: MCRAE, J., WOULD GRANT.

ON MOTION TO REMOVE SEAL: PRATHER, P.J., BANKS AND ROBERTS, JJ., WOULD DENY. PITTMAN,J., ABSTAINS.

ON MOTION FOR CHANGE OF VENUE: MCRAE, J., WOULD GRANT.

ON MOTION TO COMPEL: MCRAE, J., WOULD GRANT.

ON MOTION FOR ENTRY OF DEFAULT: MCRAE, J., WOULD GRANT.

ON BAR'S MOTION TO DISMISS: LEE, C.J., AND MCRAE, J., WOULD DENY.

Filed July 25, 1996

IN THE SUPREME COURT OF MISSISSIPPI

NO. 95-BD-01230-SCT

IN RE: PETITION OF ATTORNEY GG
FOR RIGHT TO FILE A CIVIL SUIT

McRAE, JUSTICE, STATEMENT ON ORDER:

South Mississippi Electric Power Association (SMEPA) filed a bar complaint against Attorney GG not when the alleged incidents occurred, but three years later, *after* Attorney GG filed a civil suit against his former employer. Clearly SMEPA's action against its former staff attorney was initiated in retaliation, knowing that the charge brought would put Attorney GG in fear of losing his license, and as a simple means of obtaining immunity pursuant to Rule 14 of the Rules of Discipline of the Mississippi Bar. The Bar granted summary judgment in Attorney GG's favor; in essence, finding no basis for SMEPA's charges. I therefore disagree with the majority's refusal to grant Attorney GG permission to sue his former employer for malicious prosecution and other torts, assorted federal crimes, and civil rights violations, based on a bar complaint filed against him by SMEPA and prosecuted by the Bar between 1986 and 1988. Further, since art. 3, sec. 24 of the Mississippi Constitution of 1890 provides that all courts shall be open and every person shall have a remedy available to him, I would grant Attorney GG's motion seeking a ruling by this Court on the Constitutionality of Rule 14 of the Rules of Discipline of the Mississippi Bar.

I.

Attorney GG began work as a staff attorney for SMEPA in November of 1980. By late 1981, he had become convinced, based on conversations with and memos from two SMEPA internal auditors, that SMEPA was engaging in irregular accounting procedures, particularly with regard to coal-mining operations on land it owned in Kentucky and leased to the Sandy Fork Mining Company. He asserts that in early 1983, senior management threatened to fire an auditor unless he "toned down" a report specifying problems at Sandy Fork before distribution to the REA (Rural Electrification [Administration], a federal agency with oversight authority), and tried to convince him to pressure the auditor to refrain from further criticism. According to Attorney GG, when he responded that this would violate his ethical duties as a

lawyer, management began a campaign of harassment, and eventually fired him in November of 1983. He worked for a while as [System Engineer] for Dixie Electrical Power Association, an affiliate of SMEPA, but was fired from his job in November of 1984. Thereafter, Attorney GG asserts that he had great difficulty finding employment because of bad references from SMEPA and the two firings.

On June 12, 1986, Attorney GG filed suit against SMEPA, Dixie, George Taylor (General Manager of SMEPA), [and] James Dudley (General Manager of Dixie) in the Circuit Court of Forrest County. This suit essentially charged that in pressuring him to help conceal information from the REA, harassing and firing him, the defendants had violated his federal and state constitutional rights, such as free speech; violated various federal statutes, and committed various torts, including willful infliction of emotional distress, personal injury, interference with business relations and contract rights, conspiracy, and bad faith. Attorney GG attached to this complaint a number of exhibits, including copies of internal SMEPA memos concerning the auditing of Sandy Fork operations.

On July 1, 1986, Henry Thomas, the new general manager of SMEPA,[1] filed a complaint with the Mississippi Bar, alleging that Attorney GG had obtained confidential internal documents while serving as counsel to SMEPA, and had used the documents against SMEPA for personal and financial advantage, in violation of the attorney-client privilege. On July 7, 1986, SMEPA obtained from the circuit court an order sealing the court record and granting protective relief on the grounds that certain documents attached by Attorney GG to his complaint were confidential, privileged, and contained trade secrets. Attorney GG apparently then dismissed his suit in October as part of a settlement agreement reached with SMEPA.[2]

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[1] Thomas was General Manager of the Coast Electric Power Association during the time Attorney GG was allegedly harassed and fired by SMEPA.

[2] The record suggests that a term of the settlement was that SMEPA would provide Attorney GG with a good employment recommendation.

On November 13, 198[7], the Mississippi Bar filed a formal complaint against Attorney GG, charging him with violation of DR4-101(B)(1,2, and 3) (providing that a lawyer shall not reveal client confidences or use them to the disadvantage of the client or to his own advantage), and with violation of the attorney's oath.

As it happened, Attorney GG had been listed a potential witness in a federal case in Kentucky between Sandy Fork Mining Company and SMEPA. In December of 1987, he obtained an order from the federal district court in Kentucky prohibiting all parties in the case, as well as the Mississippi Bar, from "taking any action which would inhibit [Attorney GG's] prospective testimony" in the Kentucky litigation. The court ordered that "the present charges pending before the Mississippi State Bar be withdrawn and that [Attorney GG] be allowed to testify . . . freely and without interference from anyone." This order was vacated on March 22, 1988, after the lawsuit between Sandy Fork and SMEPA was settled and dismissed.

Meanwhile, the Bar pursued the complaint against Attorney GG. In March, 1987, Attorney GG filed a motion for a writ of prohibition from this Court, seeking to enjoin the Bar from proceeding against him, or at least to prohibit certain testimony from being offered against him by SMEPA and Thomas; and seeking the Court's protections to that he could "speak out about the conduct of SMEPA" without fear of reprisal.[3] Attorney GG specifically alleged that because the Forrest County Circuit Court's order sealing the record prohibited him from discussing matters contained in his original complaint, he would be unable to testify in his own defense regarding the accusations against him. He also stated in his motion that SMEPA's pursuit of the bar complaint constituted abuse of process, especially since SMEPA and Attorney GG had signed a

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[3]Attorney GG elsewhere states that he sought the writ of prohibition "to prevent the use of the Mississippi Bar's disciplinary power as a weapon of influence upon my testimony as a federal witness [in the Kentucky litigation] and in retaliation for my service as such."

mutual covenant not to sue as part of the settlement of the Forrest County case. This Court denied Attorney GG's motion in April of 1987. An investigatory hearing was held on May 7, 1987. On March 28, 1988, a Complaint Tribunal was designated to hear the bar complaint against Attorney GG.

By opinion dated December 14, 1988, the tribunal granted summary judgment for Attorney GG. The tribunal found that the bar complaint could be reduced to two issues: 1) whether Attorney GG had violated DR4-101 by disclosing SMEPA interoffice memos to an REA field auditor in October, 1983, or by disclosing the memos to Henry Thomas, then general manager of the Coast Electrical Power Association and member of SMEPA's board of directors; and 2) whether he had violated DR 4-101 and the attorney's oath by disclosing confidences of his client SMEPA without SMEPA's consent when he filed suit in the Forrest County circuit court. The tribunal first held that Attorney GG's delivery of an interoffice memo to Thomas was not forbidden "disclosure" within the meaning of DR4-101(B), because Thomas, as general manager of CEPA and a SMEPA director, was a client and needed to know. The tribunal further held that while in retrospect, it may have been unnecessary for Attorney GG to attach the disputed memos to his Forrest County complaint, the proper standard was whether, at the time, he had reasonable belief that such attachment was necessary. The tribunal found that Attorney GG had met this standard, and ordered a judgment in his favor.

Attorney GG filed suit against SMEPA and the Bar in federal district court in [Birmingham, Alabama] sometime in 1993. On September 24, 1993, that court granted the Bar's motion to dismiss that action finding that Attorney GG had failed to exhaust his remedies under Rule 14(b) of the Rules of Discipline.

II.

By denying Attorney GG the opportunity to sue his former employer and refusing to address the constitutionality of Rule 14 of the Rules of Discipline for the Mississippi Bar, the majority authorizes the filing of a bar complaint against an attorney as a tool to guarantee immunity from any civil action that attorney may bring or be expected to initiate against the filer. Further, as the case *sub judice* all too clearly illustrates, it sanctions the use of a bar complaint as part of a subtle scheme of harassment against an

attorney by a client, another attorney or any other entity. Rule 14 of the Rules of Discipline for the Mississippi Bar provides:

> (a) All complaints filed, statements made and documents or other tangible things produced pursuant hereto shall be absolutely privileged, and no civil suit predicated therein may be instituted, and each person, firm, association or legal entity filing such a complaint shall be immune from any civil suit pending thereon. The officers of the Bar and all disciplinary agencies and their assistants, staff, employees and receivers shall be immune from civil suit for any conduct arising out of the performance of their official duties. Every person shall be immune from civil suit for all evidence or testimony given or submitted in the course of any investigation, investigatory hearing, formal hearing or review proceedings held and conducted under these rules.
>
> (b) In an action separate and distinct from the disciplinary proceedings, the attorney may, by petition filed with the clerk of the Court, seek a finding by the Court or its special master on the issue of malicious prosecution, abuse of process, malicious publication to persons not authorized to receive information pertaining to matters arising under these rules, slander or libel. If the Court finds or approves a finding by a special master that there appears to or may have been malicious prosecution, abuse of process, defamation of character, slander or libel, the court shall enter its order granting the right to sue, notwithstanding the immunity provided above. Such finding and right to sue shall constitute only a right to commence an action, not an adjudication as to whether or not there was, in fact, a waiver of the immunity provided above, and not a finding upon the merits of any action which the attorney may thereafter institute. No action shall be instituted prior to the issuance of the order herein provided. The statute of limitations provided by statute for applicable causes of action shall commence on the date the order is entered.

For all practical purposes, Rule 14(a) prohibits the initiation of civil proceedings predicated upon a bar complaint against any individual, firm, association or legal entity. Not only is

one precluded from bringing a civil action based upon the issues raised in the complaint, but also from pursuing litigation in response to the actual filing of the complaint, itself, unless, of course, this Court, sitting as Supreme Jury, finds, pursuant to Rule 14(b), that "there appears to or may have been malicious prosecution, abuse of process, defamation of character, slander or libel."

Based on the limited evidence available, since without permission to commence litigation there can be no discovery, there appears, at the very least, to be some basis for Attorney GG's claim of malicious prosecution in SMEPA's filing of a bar complaint against him. It bears noting that the utility's complaint was filed with the Bar *three years* after Attorney GG left the company, but only *three weeks* after he filed a civil suit against his former employer. The record reveals nothing but the filing of Attorney GG's own case that might have prompted SMEPA's complaint. The Bar found that Attorney GG's actions did [not] violate any of its rules. Thus, SMEPA's filing accomplished two things: it provided retaliation against Attorney GG for filing suit against his former employer and served to cloak SMEPA with immunity from any claims raised against it by [Attorney GG].

I have no problem with a review of civil actions based on bar complaints; some checks and balances are necessary to weed out frivolous cases or those filed solely in retaliation for the filing of a bar complaint. Rule 14, however, has gone too far in abridging the rights of attorneys who, like any other citizen, might seek redress for some wrong. We do not provide immunity from civil litigation by members of any other profession to either individuals or corporations.

In ***Roussel v. Robbins,*** No. 90-CA-00536-SCT, we allowed Attorney Robbins to file a counterclaim against his former client for malicious prosecution and malicious circulation of confidential information after Roussel, the client, pursued a court action against him after dismissal of a previously filed bar complaint. We noted in that case that "[h]ad Robbins filed a suit against Roussel solely on the basis of Roussel's bar complaint, Roussel might have had a valid claim to immunity . . ." Slip op. at 14. In the case *sub judice*, Attorney GG had already filed suit against [SMEPA] *before* SMEPA filed its complaint with the bar.

Though settled, it does not appear from the record that SMEPA complied with the terms of the settlement agreement. That a bar complaint was even filed is evidence of SMEPA's failure to comply. Thus, we are left to distinguish ***Roussel*** from the case *sub judice* only by the fact that Roussel was a disgruntled individual client and SMEPA, a corporate client/employer.

Why should an attorney be barred from filing suit on his own behalf, placing limitations on him not made upon other professionals? Accordingly, I dissent

Filed July 7, 1986

In the Circuit Court of Forrest County Mississippi

FRANKLIN V. ANDERSON — PLAINTIFF

VERSUS — NO. 6-86-1913

GEORGE B. TAYLOR, JR.,
SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION,
JAMES T. DUDLEY, JR.,
DIXIE ELECTRIC POWER ASSOCIATION
LEONARD G. PIERCE,
UNKNOWN BONDING COMPANIES A-Z
UNKNOWN INDIVIDUALS A-Z — DEFENDANT

ORDER SEALING THE COURT RECORD AND GRANTING PROTECTIVE RELIEF

THIS cause having come on to be heard, on the 24th day of June, 1986, upon the Defendant, South Mississippi Electric Power Association's (hereinafter referred to as "SMEPA"), Motion for a Permanent Injunction, Motion to Seal the Record and for Protective Order, and the Court having heard the evidence and having considered the arguments of counsel, and the authorities provided by counsel and being fully advised in the premises does find as follows:

I.

That certain documents attached to the Complaint filed herein are confidential and were wrongfully obtained, the publication of which violates the attorney-client privilege. Certain documents in the form of memorandums, opinions, and letters which were obtained by the plaintiff during his employment with defendant, SMEPA, as its attorney have been attached as exhibits to the Complaint filed herein.

II.

Plaintiff was employed as an attorney for SMEPA during some of the time periods as alleged in the Complaint. In this capacity, plaintiff obtained without permission or consent some or all of the documents which are attached to the Complaint as Exhibits. A fiduciary relationship existed between the plaintiff and SMEPA which requires the preservation of confidential information and secrets of the defendant, SMEPA, Plaintiff's

employer. Mississippi Code of Professional Responsibility, EC 4-1.

III.

The defendant in this matter has not consented, nor agreed to disclosure of said confidential information and secrets, thereby excluding the plaintiff or his agents or counsel from the disclosures which have been made in this action. Further, the confidences and secrets of the defendant, SMEPA, should not be disclosed to any other lawyer, corporation, person, or other entity without the consent of the defendant, SMEPA, the plaintiff's prior employer. Such consent has not been given in this matter. Mississippi Code of Professional Responsibility, EC 4-2.

IV.

The obligations of a lawyer to preserve the confidences and secrets of a client continue after the termination of employment. Mississippi Cod of Professional Responsibility, EC 4-6; Miss. Code Ann. § 73-3-37.; Mississippi Code of Professional Responsibility, DR 4-101(A), -(B).

V.

The allegations of the Complaint and the exhibits attached in this action reveal "confidences" as defined by the Mississippi Code Annotated and the Mississippi State Bar Code of Professional Responsibility. "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that a client considers inviolate or the disclosure of which would be embarrassing or likely be detrimental to the client. Mississippi Code of Professional Responsibility , DR 4-101. A lawyer should not knowingly reveal a confidence or secret of his client, use a confidence or secret of the client to the disadvantage of the client, and use a confidence or secret of the client for the advantage of himself or a third party. Id. The plaintiff in this matter has unilaterally and without permission of his former client, SMEPA, disclosed various documents including but not limited t memorandums of law, internal memorandums and drafts thereof, and letters which were retained by Plaintiff in his capacity as a attorney for defendant, SMEPA, or which may have been obtained by Plaintiff without Defendant's permission.

VI.

The information which is the subject of this motion constitutes trade secrets within the meaning of Rule 26(d)(7) of the Mississippi Rules of Civil Procedure. Pursuant to Rule 26(d)(7) such trade secrets concerning confidential research, development, or commercial information shall not be disclosed or shall be disclosed only in a designated manner.

VII.

Defendant, SMEPA, is currently involved in litigation before the Federal Courts in the Southern District of Mississippi and the Eastern District of Kentucky. Many of the items attached as exhibits to this Complaint relate to said litigation. If said items which do relate to said litigation are allowed to become public record, the Defendant, SMEPA, will suffer irreparable injury in that the attorneys for the opposing parties in the Federal Court litigation will gain access to confidential and/or privileged information, work product, and trade secrets.

VIII.

Defendant, SMEPA, has previously obtained a Temporary Restraining Order, Order Sealing Record, and Protective Order. This Order was signed by the Honorable Howard Patterson, Chancellor of Forrest County. In conjunction with this order a Bond of $1,000.00 was posted.

IX.

If the confidential information and trade secrets which are contained in the Complaint and Exhibits in this matter are allowed to remain public record, the Defendant, SMEPA, will suffer irreparable injury.

X.

The Temporary Restraining Order which was previously entered while the court took this motion under advisement, has been extended pending further consideration.

IT, THEREFORE, ORDERED AND ADJUDGED that Marian Brown, Circuit Clerk of Forrest County seal the twenty-seven (27) page Complaint and Exhibits A through Z in Cause Number 6-86-1913, to prevent any further review, inspection, and copying of said complaint and exhibits and that said Complaint and Exhibits be kept securely by the Clerk separate and apart from the remainder of the Court file.

IT IS, FURTHER ORDERED AND ADJUDGED that Franklin V. Anderson, Plaintiff in Cause Number 6-86-1913 and his attorneys, employees, agents and all other persons acting on his behalf be restrained from producing, furnishing, disclosing, or distributing said confidential and/or privileged information, or a copy of any part or parts of the Complaint and attached exhibits in Cause Number 6-86-1913 to any other person or legal entity.

IT IS, FURTHER ORDERED AND ADJUDGED that Franklin V. Anderson, Plaintiff in Cause Number 6-86-1913 be enjoined from engaging in discussions of any confidential or privileged information, or trade secrets which he learned as a result of his employment as an attorney with SMEPA, with any party except for his counsel of record, Noel P. Giuffrida who is hereby enjoined from engaging in discussions regarding any confidential or privileged information with any person except the Plaintiff, Franklin V. Anderson; it is further ordered and adjudged that in the event the Plaintiff, Franklin V. Anderson, and/or his attorney Noel P. Giuffrida deem it necessary to discuss the confidential information and secrets of the Defendant, SMEPA, with their insurers and indemnifiers or representatives of the Mississippi State Bar, they shall make application to this Court for authority so to do. The confidential or privileged information and trade secrets controlled by this Order is found in but is not limited to, paragraphs numbered 21, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 46, 49, 53, 54, 55, 56, 57, 58, 59, 60, 66, 84, 101, 107, 111, and 115, of the Complaint and Exhibits F, I, J, K, L, M, S, T, U, V, W, X, Y, and Z.

IT IS, FURTHER ORDERED AND ADJUDGED that the Defendant, SMEPA, be relieved of any further liability under its bond, and that further bond is waived

SO ORDERED AND ADJUDGED this the 7th day of July, 1986

/s/ Richard W. McKenzie

Received July 7, 1986

COMPLAINT

(see instructions on back [omitted])

PART ONE: I, Henry I. Thomas, General Manager; South Mississippi Electric Power Association; P.O. Box 15849; Hattiesburg, MS 39404 (601) 268-2083
do hereby file with the Mississippi State Bar a complaint against Attorney Franklin V. Anderson; Route 1 Box 280-A; Seminary, MS 39479

PART TWO: Answer by writing either "yes" or "no" on the line after the question. Can any person testify about what was said, done, not done or agreed upon by you and the attorney? Yes (See back for instructions. [omitted])

PART THREE: I have read and to the best of my ability followed the instructions on the back of this page. I will also follow those instructions in the future.

The specific thing or things I am complaining about is or are: Securing interoffice documents while serving as in-house counsel and using these documents against SMEPA for his own personal use and financial advantage in claims against SMEPA.

In support of those things listed above, the facts of my complaint are: Frank Anderson was employed as an Attorney for SMEPA. During his employment, he was involved in reviewing confidential interoffice information between and among department managers, the General Manager, and the Internal Auditor. He has now filed a Complaint (6-86-1913 in the Circuit Court of Forrest County) against SMEPA and others. As a part of this action, he has used more than twelve (12) confidential documents that he apparently secured without permission of SMEPA's management for the sole purpose of using them for personal advantage against SMEPA. It is my opinion that he has violated attorney/client privilege which covers these types of activities. A copy of the Complaint (with Exhibits) is attached.

PART FOUR: The facts in this complaint are true and correct to the best of my knowledge.

7-1-86 /s/Henry Thomas

EXHIBIT ONE

PAGE 1 OF *_____ PAGES

*To be filled in by the Bar.

MUTUAL COVENANT NOT TO SUE

We, Franklin V. Anderson and Marie Anderson, husband and wife, on behalf of ourselves and our heirs, executors, administrators and assigns, for and in consideration of an agreement by George. B. Taylor (referred to in the Complaint as George B. Taylor, Jr.), South Mississippi Electric Power Association, James T. Dudley, Jr., Dixie Electric Power Association, and Leonard G. Pierce, a/k/a/ L.G. Pierce, as evidenced by execution of this instrument, not to sue for abuse of process, malicious prosecution, disclosure of trade secrets, breach of confidence or any other cause of action arising from that certain lawsuit entitled Franklin V. Anderson versus George B. Taylor, Jr., South Mississippi Electric Power Association, James T. Dudley, Jr., Dixie Electric Power Association, Leonard G. Pierce, Unknown Bonding Companies A-Z Unknown Individuals A-Z, in the Circuit Court of Forrest County, Mississippi bearing Cause Number 6-86-1913, and for further consideration that Defendant, South Mississippi Electric Power Association, will give an employment reference for Franklin V. Anderson consistent with that certain Letter of Commendation dated December 29, 1983, from the Board of Directors of South Mississippi Electric Power Association to Franklin V. Anderson and as additional consideration defendants James T. Dudley, Jr., and Dixie Electric Power Association agree that should an employment reference be requested from them that they will state the following: "Mr. Anderson came to work on a temporary basis as System Engineer. He supervised staking and metering departments. He demonstrated above average knowledge of metering technology. He also handled meter tampering investigations. He left to seek permanent employment. He exhibited high moral standards and good work ethics.", plus other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, do by this instrument covenant with George B. Taylor (referred to in the Complaint as George B. Taylor, Jr.), South Mississippi Electric Power Association, James T. Dudley, Jr., Dixie Electric Power Association, Leonard G. Pierce, a/k/a L.G. Pierce, their agents, servants, insurers and indemnifiers, Aetna Casualty Insurance Company and Nationwide Insurance Company to forever refrain from instituting, pressing, or in any way aiding any claim, demand, action, or cause of action for

damages, costs, lost of services, expenses, or compensation for, or on account of, or in any way growing out of or hereafter to grow out of Franklin V. Anderson's past employment with Defendant, South Mississippi Electric Power Association, and with Defendant, Dixie Electric Power Association, and his departure from said employment, and decision of prejudice of that certain action styled In the Circuit Court of Forrest County, Mississippi, Franklin V. Anderson, Plaintiff versus George B. Taylor, Jr., South Mississippi Electric Power Association, James T. Dudley, Jr., Dixie Electric Power Association, Leonard G. Pierce, Unknown Bonding Companies A-Z, Unknown Individuals A-Z, Defendant, Cause Number 6-86-1913.

It is further agreed and understood that this covenant not to sue extends to South Mississippi Electric Power Association, its directors, agents, employees, successors, subsidiaries and assigns, including Giles Bounds, Joe J. Stevens, Horace Twiford, Virgil Burge, Kenneth Rester, Robert Occhi, Harry H. Bonner, Henry Waterer, Jr., L.G.Pierce, Jr., Robert L. Graham, E.C. Parker, Hollis Alford, W.W. Bond, W.T. Shows, Frank Ely, D.R. Ware, Jack Ware, J.D. Dudley, Sr., Naif Jordan, Blaine Eaton, W.T. Ruffin, Bobbie J. Moore, Robert St. John, Joe W. Noble, James A. Ventress, Dykes James, Greg Kitchens, Frank C. Fox, Jr., Floyd Lynk, W.C. McKamy, Jr., L.R. Parker, and Henry R. Bridgforth, their agents, and their employees, including, but not limited to, Henry Thomas, Jack Ware, Jack Harris, Dennis Johnson, Richard Montgomery, Marcus Ware, John Laird, Roy Collars, and John Keys.

It is further agreed and understood that this covenant not to sue extends to Dixie Electric Power Association, its directors, agents, employees, successors, subsidiaries and assigns, including, but not limited to, E.L. Cole, Glaze Anderson, Robert L. Graham, Cooper T. Rounsaville, L.G. Pierce, J.V. Walters, Troy Shirley, and James T. Dudley, Jr.

For the above referenced consideration we, Franklin V. Anderson and Marie Anderson, hereby agree to hold harmless the above referenced parties and any and all other persons, partnerships, corporations or entities associated or in any way connected with South Mississippi Electric Power Association and Dixie Electric Power Association from any damages to Franklin V.

Anderson and Marie Anderson resulting from Franklin V. Anderson's employment with South Mississippi Electric Power Association and Dixie Electric Power Association.

/s/Franklin V. Anderson

SWORN TO AND SUBSCRIBED before me by Franklin V. Anderson on this the 3rd day of October, 1986.

[stamp-Beth H. Teters
Notary Public California
City and County of San Francisco
My Commission Expires May 14, 1988]

My Commission Expires:
May 14, 1988

/s/ Beth H. Teters
Notary Public

/s/ Marie Anderson
Marie Anderson

SWORN TO AND SUBSCRIBED before me by Marie Anderson on this the 6th day of October, 1996.

/s/ Sherry Baber
Notary Public

My commission expires:
[stamp] My commission expires April 15, 1989

South Mississippi Electric
Power Association
By: /s/ Henry Thomas
Henry Thomas, General Manager

SWORN TO AND SUBSCRIBED before me by Henry Thomas, General Manager for South Mississippi Electric Power Association, on this the 8th day of October, 1986.

/s/ Yvette Evans
Notary Public

My commission expires:
11/17/87

Dixie Electric Power Association
By: /s/ James T. Dudley, Jr.
James T. Dudley, Jr.,
General Manager

SWORN TO AND SUBSCRIBED before me by James T. Dudley, Jr., General Manager for Dixie Electric Power Association, on this the 10th day of October, 1986.

/s/ Nelda K. Holifield

My commission expires: Notary Public

[stamp] My commission expires Feb. 18, 1990

George B. Taylor

George B. Taylor

SWORN TO AND SUBSCRIBED before me by George B. Taylor, on this the 13th day of October, 1986.

/s/ Sherry Baber

My commission expires: Notary Public

[stamp] My commission expires April 15, 1990

/s/ James T. Dudley, Jr.

James T. Dudley, Jr.

SWORN TO AND SUBSCRIBED before me by James T. Dudley, Jr., on this the 10th day of October, 1986.

/s/ Nelda K. Holifield

My commission expires: Notary Public

[stamp] My commission expires Feb. 18, 1990

/s/ L.G. Pierce

Leonard G. Pierce

SWORN TO AND SUBSCRIBED before me by L.G.Pierce on this the 10th day of October, 1986.

/s/ Nelda K. Holifield

My commission expires: Notary Public

[stamp] My commission expires Feb. 18, 1990

READ, APPROVED AND AGREED TO:

/s/ Franklin V. Anderson

Franklin V. Anderson, Individually

and as Attorney for himself

/s/ Noel P. Giuffrida

Noel P. Giuffrida

Attorney for Plaintiff

Bryan, Nelson, Allen, Schroeder and Randolph

Attorneys for Defendants

By: /s/ V.K. Smith

Michael K. Randolph, J.W. Land, V.K. Smith

Filed October 13, 1986

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

FRANKLIN V. ANDERSON — PLAINTIFF

VERSUS — NO. 6-86-1913

GEORGE B. TAYLOR, Jr.,
SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION
JAMES T. DUDLEY, JR.,
DIXIE ELECTRIC POWER ASSOCIATION
LEONARD G. PIERCE
UNKNOWN BONDING COMPANIES A-Z
UNKNOWN INDIVIDUALS A-Z — DEFENDANT

FINAL JUDGMENT OF DISMISSAL WITH PREJUDICE

THIS CAUSE having this day come before the Court on the parties Stipulation of Dismissal, and the Court having considered same, and being fully advised in the premises does find as follows;

I.

That all parties herein have appeared either individually or through their counsel of record.

II.

That the Plaintiff objects to the findings of the Court contained in paragraphs one through ten in the Courts July 7, 1986 Order. However in the spirit of compromise, and settlement of the issues pending between the parties, the Plaintiff has elected not to appeal same. Plaintiff does agree to be bound by the Court's ruling in the same Order dated July 7, 1986 and agrees that the ruling, as opposed to findings, should be made permanent.

III.

That the Complaint and attached exhibits contain certain information which the Defendants consider confidential information and/or work product which was obtained by the Plaintiff, Franklin V. Anderson, in his capacity as attorney for Defendant, South Mississippi Electric Power Association.

IT IS, THEREFORE, ORDERED AND ADJUDGED that this cause be dismissed with prejudice against the Plaintiff, Franklin V. Anderson, in favor of the Defendants, South Mississippi Electric Power Association, George B. Taylor, Jr.

(correct name George B. Taylor), James T. Dudley, Jr., Dixie Electric Power Association, and Leonard G. Pierce.

IT IS, FURTHER ORDERED AND ADJUDGED that this Courts Order Sealing the Court Record and Granting Protective Relief be made permanent, and that Marian Brown, Circuit Clerk of Forrest County and her successors in office be directed to permanently seal the Court file, after first having delivered the Exhibits attached to the Complaint unto the attorneys for South Mississippi Electric Power Association.

IT IS, FURTHER ORDERED AND ADJUDGED that all costs of Court accrued herein are assessed to the Plaintiff, Franklin V. Anderson.

SO ORDERED AND ADJUDGED this the 13th day of October, 1986.

/s/ Richard W. McKenzie
Circuit Judge

READ, APPROVED, AND AGREED TO:

/s/ Franklin V. Anderson
Franklin V. Anderson,
Individually and as his own Attorney

/s/ Noel P. Giuffrida
Noel P. Giuffrida
Attorney for Plaintiff

Bryan, Nelson, Allen, Schroeder and Randolph
Attorneys for Defendants
By: V.K. Smith
Michael K. Randolph
J.W. Land
V.K. Smith

Filed Nov 10, 1986

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION
NO. 86-138

SANDY FORK MINING COMPANY, INC. PLAINTIFF
VS:
SOUTH MISSISSIPPI ELECTRIC
POWER ASSOCIATION, INC.
DEFENDANT

AGREED ORDER

WHEREAS, the parties claim that certain information, documents and things requested of them in discovery in this litigation should be kept confidential in order to protect the legitimate business interests of the parties and their customers and business and personal associates;

IT IS HEREBY ORDERED, that during the pendency of these consolidated actions, or until this order is amended or superseded, the parties will follow the procedures set forth below with respect to information, documents or things received from any other party:

1. Confidential Matter.

a. As used herein "Confidential Matter" shall mean any information, documents or things furnished in the course of this litigation by any party, which the producing party, in good faith, deems confidential and designates as such pursuant to Section 1(b) below. The designation of such material as confidential is a certification that the designating party believes in good faith that good cause exists, within the meaning of subparagraph (c) of Rule 26 of the Federal Rules of Civil Procedure, for the court to grant a protective order.

b. Any documents or things deemed confidential by the producing party shall be marked or stamped as such. Documents and things produced by any party prior to the execution of this order and which contain or reflect Confidential Matter, may be designated as confidential by providing new copies which have been stamped or marked "confidential." With respect to multi-page documents which contain Confidential Matter, the producing party may make its designation by marking only the first page

thereof "confidential." With respect to deposition testimony that constitutes or refers to Confidential Matter, the party giving the testimony shall designate the testimony which it believes to be confidential du[r]ing the course of the deposition. The designating party shall have two weeks after receipt of the transcript to make a determination as to the portions, additional or otherwise, of the testimony which it believes are confidential. Until the two week period has expired, all the designated material shall be treated as constituting Confidential Matter. Any information, documents or things not designated as "confidential" shall not be covered by this order, provided, however, that inadvertent production of any information, document or thing without a designation of "confidential" shall not by itself be deemed a waiver of the producing party's claim of confidentiality as to such matter, and the producing party thereafter may designate the same as "confidential." Disclosure by any party of the confidential nature thereof shall not be deemed a violation of this order.

c. All Confidential Matter (including the existence of such matter) made available to any party shall be treated by such party and counsel for such party as confidential for use solely in connection with this action.

d. Except as otherwise provided in this order, all Confidential Matter (including the existence of such matter) shall not be disclosed by any party or counsel for any party to anyone other than a party, counsel, associate counsel, paralegals, and office or other support staff assisting counsel in the preparation of this case for trial. Prior to such disclosure the party or counsel disclosing Confidential Matter shall inform such persons that the matter is confidential and may not be disclosed, except as provided in this order.

e. In addition to those persons enumerated in subparagraph 1(d), a party or counsel for a party may disclose Confidential Matter to experts and consultants retained by that party or counsel for that party in good faith to assist in pretrial proceedings, preparation, settlement or trial of this action, and to witnesses and prospective witnesses for trial or for purposes of preparation therefor, and only to the extent necessary for such preparation, provided, that prior to such disclosure counsel for the party disclosing Confidential Matter shall advise such person or persons

that the Court has ordered that such information, documents or things shall be kept confidential and may not be disclosed in any form or used for any purpose whatsoever other than those aforementioned. Furthermore, prior to disclosure of any Confidential Matter to any such person, that person shall first

read this protective order, and

sign a copy of the Confidentiality Agreement attached hereto as Exhibit A [omitted], thereby becoming subject to this protective order.

Should counsel for party seeking to disclose Confidential Matter be unable, after using his or her best efforts, to secure an executed Confidentiality Agreement from any witness or prospective witness for trial, such counsel shall, prior to making disclosure to such witness or prospective witness, communicate with counsel for the producing party in a good faith effort to resolve the matter informally. If the matter cannot be resolved informally, then counsel may apply to the Court for relief from the requirements of this subparagraph 1(e) with respect to such witness or prospective witness.

f. A copy of each executed Confidentiality Agreement referred to in subparagraph 1(e) above shall be retained in a secure place by counsel for the party disclosing Confidential Matter. If an issue is raised as to whether any provisions of this order have been violated, such counsel shall produce to counsel for the producing party a copy of such a Confidentiality Agreement.

g. Notwithstanding anything contained in Section 1(e) above:

any party or counsel for any party may disclose any document designated as confidential or the contents of such document to any expert, consultant, witness or prospective witness where it is indicated on the face of such document that such person was the author or an intended recipient of such document; and

any party or counsel for any party may disclose Confidential Matter to any other party or counsel for party who has entered into this order.

Disclosure of Confidential Matter (including the existence thereof) shall not be made by any party or its counsel to any person or category of persons not included under the terms of this order

without the written consent of counsel for the producing party. In the event such consent is granted, such person or persons shall, prior to any disclosure, sign a copy of the Confidentiality Agreement attached hereto as Exhibit A [omitted].

2. Use in Briefs or as Exhibits. Confidential Matter used as exhibits to or incorporated in any other manner in brief, memoranda, transcripts of testimony or other documents filed with the court shall be protected as follows:

to the extent that any brief, memorandum, transcript of testimony or other document or any portion thereof submitted to the court incorporates or refers to the substance of any information contained in any Confidential Matter, such brief, memorandum, transcript of testimony or other document or portion thereof shall be filed under seal.

Confidential Matter that is otherwise made a part of the record shall be filed with the Court under seal.

3. At the final conclusion of the proceeding, including, without limitation, any appeal or retrial, all counsel and every person to whom such Confidential Matter has been disclosed shall return to counsel for the producing party all materials designated confidential, and all materials which contain or reflect Confidential Matter, including any copies, extracts or summaries thereof. As to those materials which contain or reflect Confidential Matter, but which constitute counsel's work product, counsel shall destroy such work product and all copies thereof. The producing defendant and any party may, however, agree on a different procedure for disposing of Confidential Matter.

4. Any party shall have the right to challenge any designation of confidentiality by a party by seeking an order of the Court with respect to any information, documents or things designated by the producing party as confidential. In any such application, the party bearing the burden of establishing the need for disclosure or confidentiality shall be determined by applicable law and no inference shall be drawn from the fact that the information, documents or things previously were designated as confidential under the order. The parties agree that before seeking any relief

from the court order under this paragraph 4 they will make a good faith effort to resolve any disputes concerning the confidential treatment of any information. For the purposes of this order the phrase "for good cause shown" in the first sentence of subparagraph (c) of Rule 26 of the Federal Rules of Civil Procedure shall be defined as a "showing of concrete harm sufficient to outweigh the ordinary presumption of openness in litigation and considerations emanating from the First Amendment."

5. The designation of any information, documents or things as confidential pursuant to this order shall not, in and of itself, raise any inference as to the confidentiality of any information, documents or things marked for identification purposes or introduced in evidence at the trial of this action. Nothing herein, however, shall preclude the producing party from seeking confidential treatment from the court with respect to such information, documents or things or from raising any available objection, including, but not limited to, the admissibility of evidence, materiality, trial preparation materials, and privilege.

6. If any person serves on a party a subpoena duces tecum or other request for production of Confidential Matter produced by a party and covered by this order, that party shall immediately notify the producing party of any such request, and shall notify the person serving such request that such materials are covered by this order. Unless within five business days of receipt of such notification to the producing party, the producing party applies for an order from a court of competent jurisdiction precluding the party from complying with such request, such party shall be free to produce the Confidential Matter. If the producing party applies for such an order, the party upon whom the subpoena is served shall not produce the Confidential Matter until after the court rules on such application.

7. After the termination of this action, this order shall continue to be binding upon the parties hereto, and all persons to whom Confidential Matter has been disclosed or communicated.

8. This order may be modified in the event that the parties agree to a modification of the provisions hereof, or such modification is ordered by this Court or a magistrate thereof.

/s/ Donald H. Vish
Donald H. Vish
Margaret A. Miller
WYATT, TARRANT &
COMBS
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Lexington, Kentucky 40507
(606) 233-2012
COUNSEL FOR DEFENDANT

/s/ James R. Cox ?
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(606) 878-8888

COUNSEL FOR PLAINTIFF

Dated: Nov. 6, 1986
SO ORDERED:
/s/ Eugene E. Siler, Jr.
EUGENE E. SILER, JR.
CHIEF JUDGE
[script endorsement]
cc: James Cox, Gary Crabtree, James Compton, Mark Nelson, Donald Vish 11-10-86

RECEIVED AND FILED MAR 30 1987

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

FRANKLIN V. ANDERSON PETITIONER

VS. CONFIDENTIAL MSC. NO.: 261

MISSISSIPPI STATE BAR
HENRY THOMAS, AND SOUTH
MISSISSIPPI ELECTRIC POWER
ASSOCIATION

MOTION FOR WRIT OF PROHIBITION

COMES NOW, the Petitioner, FRANKLIN V. ANDERSON, by and through his attorney, and requests prohibitory and equitable relief as provided at: Rule 32 of the Rules of the Supreme Court, Rule 14(b) of the Rules of Discipline for the Mississippi State Bar, and § 9-1-19 Miss. Code Ann. (1972). In support hereof Petitioner has provided an accompanying Memorandum Brief and respectfully states the following:

1. As is more thoroughly discussed in the accompanying Brief, Petitioner respectfully requests prohibitory relief prohibiting certain testimony being offered against him by Mr. Henry Thomas and South Mississippi Electric Power Association.

2. Petitioner also requests prohibitory and equitable relief so that Petitioner may pursue his remedies for injustices he has received, as described in the accompanying Brief, in either State or Federal Court.

3. Petitioner is a Federal Witness and has been designated such by Mr. Henry Thomas, the General Manager for South Mississippi Electric Power Association (SMEPA). Consequently, as discussed extensively in the accompanying Brief, Petitioner is entitled to the protection of the . . .[end of first page]

[script endorsement in left margin]
Overruled
4-17-87
Dan Lee

FILED DEC 29 1987

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

SANDY FORK MINING COMPANY, INC., PLAINTIFF
VS. CASE NO.: 86-138
SOUTH MISSISSIPPI ELECTRIC
POWER ASSOCIATION, DEFENDANT

ORDER GRANTING PROTECTIVE AND INJUNCTIVE RELIEF

THIS DAY this matter came on to be heard upon written Motion with appropriate supporting Memorandum of Law filed by Movant, FRANK ANDERSON, a designated witness in this case asking this Court to provide certain injunctive and prohibitory relief to Mr. ANDERSON so that he may testify in this Court without being intimidated or harassed. The Court, upon duly considering all pertinent circumstances, all pertinent pleadings, and supporting Briefs finds that Mr. ANDERSON's Motion is well-taken and hereby grants same.

IT IS THEREFORE ORDERED AND ADJUDGED that all parties and the MISSISSIPPI STATE BAR are hereby prohibited and enjoined from taking any action which would prohibit or inhibit Mr. ANDERSON's prospective testimony in this Court.

IT IS FURTHER ORDERED AND ADJUDGED that the present charges pending before the MISSISSIPPI STATE BAR be withdrawn and that Mr. ANDERSON be allowed to testify in this Court freely and without interference from anyone.

SO ORDERED AND ADJUDGED on this the 29 day of December, A.D., 1987.

/s/ Eugene E. Siler, Jr.
U.S.DISTRICT COURT JUDGE

[script endorsement]
cc: Marvin Hirn, Brian House, James Compton, Mark Nelson, Donald Vish, Kim Chaze 12-29-87

FILED MAR 22 1988

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON

CIVIL ACTION NO. 86-138

SANDY FORK MINING COMPANY, INC., PLAINTIFF

VS:

SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION, INC.,
DEFENDANT

ORDER

The Mississippi State Bar has moved for reconsideration of this Court's Order of December 29, 1987, which ordered as follows:

> It is therefore ordered and adjudged that all parties and the Mississippi State Bar are hereby prohibited and enjoined from taking any action which would prohibit or inhibit Mr. Anderson's prospective testimony in this Court.
>
> It is further ordered and adjudged that the present charges pending before the Mississippi State Bar be withdrawn and that Mr. Anderson be allowed to testify in this Court freely and without interference from anyone.

As final judgment was entered in this case on March 1, 1988, there is no longer any need for the December 29, 1987, Order. Accordingly, it is hereby

ORDERED that this Court's Order of December 29, 1987, be and is vacated and set aside.

This is the 22 day of March, 1988.

/s/Eugene E. Siler, Jr.
EUGENE E. SILER, JR.
Chief Judge

[script endorsement]

cc: Marvin Hirn, Brian House, Kim Chaze, James Compton, Mark Nelson, Donald Vish, Michael Martz, James Ridings 3-22-88

MANDATE RECEIVED AND FILED OCT 18, 1988

IN THE SUPREME COURT OF MISSISSIPPI

(BEFORE A COMPLAINT TRIBUNAL)

MISSISSIPPI STATE BAR COMPLAINANT

VS. CONFIDENTIAL MISC. NO. 284

FRANKLIN V. ANDERSON DEFENDANT

MEMORANDUM OPINION

This cause is before the Tribunal on motion of the defendant to dismiss with prejudice the Formal Complaint filed by the Mississippi State Bar ("MSB"). To the extent there is no conflict with procedures set forth in the Rules of Discipline adopted by the Supreme Court of Mississippi, effective from and after January 1, 1984, the Mississippi Rules of Civil Procedure govern as provided in Rule 81(a)(2). See: Mississippi State Bar v. Attorney L, 511 So2d 119, 122 (MS, 1987). Hereinafter references to the Mississippi Rules of Civil Procedure shall be cited simply by the rule number.

The motion presents factual allegations outside the Formal Complaint (no answer appears to have been filed), and in accord with Rule 12(b) will be considered as a motion for summary judgment under Rule 56. Such a motion may be granted only if it appears from the record that there is no issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.

The Tribunal has before it, and has considered: the Formal Complaint, with exhibits; exhibits to defendant's Complaint; the Motion to Dismiss, with exhibits; Movant's supporting brief, with exhibits; the MSB response to motion to dismiss, with exhibits; and Movant's rebuttal brief. We have noted the allegations in defendants's Complaint against SMEPA, a[s] an exhibit to the Formal Complaint. This document, being merely an unverified pleading in another case, cannot be treated as evidence or as an affidavit in support of a motion for summary judgment. Taking the documentary evidence at face value, we are of the opinion the pending motion in its present form is not well taken and must be denied as premature.

Attendant Circumstances[4]

The South Mississippi Electric Power Association ("SMEPA") employed defendant as a staff attorney during the period November 17, 1980, through December 31, 1983. During the period of his employment SMEPA had a contract with Sandy Fork Mining Company, Inc. ("SFM") under which the latter mined coal from property owned by SMEPA in the state of Kentucky. SMEPA's Internal Auditor, Dennis Johnson, made an examination of SFM's records in September of 1982 showing minor discrepancies. Later, Johnson made another audit report of SFM's activities on January 19, 1983, which disclosed substantial discrepancies. This report, with several revisions primarily dealing with the auditor's conclusions, appears to be the center of the controversy in this proceeding. Hereinafter, it will be referred to as the "memorandum" regardless of which version is involved, there being no substantial changes in the factual portions. Without going into detail, it appeared SFM's officers were overcharging SMEPA through excessive salaries and bonuses paid them, excessive sales commissions paid Garland Coal (an affiliate), carrying members of the officers' families on the SFM payroll with substantial salaries, and so on. Johnson was apparently pressured to "tone down" his report. Defendant alleges he assisted Johnson in this task, and advised the SMEPA general manager as to Johnson's professional responsibilities as an accountant, and his own responsibilities as an attorney. It appears from defendant's Complaint filed June 12, 1986, against SMEPA (the "Complaint"), that relations between the SMEPA manager and defendant deteriorated. In October of 1983, defendant is alleged to have discussed [SMEPA] problems with REA representatives, and to have given the REA field auditor a copy of the memorandum. In November, defendant was notified his services were no longer required, and he was terminated effective December 31, 1983. He sued SMEPA for wrongful discharge, and SMEPA filed a complaint.

---

[4]To place the pending motion in a proper perspective, we have considered the allegations of the Complaint, an exhibit to the Formal Complaint, even though the facts stated in the Complaint are not taken as established.

It is obvious that the memorandum prepared by the SMEPA Internal Auditor was prepared for internal use only, and that defendant's access to them arose out of his employment as staff attorney. The record is not clear as to the extent SMEPA may have disclosed the memorandum contents, or to whom, or under what circumstances. We note that paragraph 13 of defendant's Complaint alleges that Singing River, Dixie, and nine other co-operatives are "owner/members" of SMEPA; that in paragraph 51, Mr. Thomas is described as a director of and chairman of the Wage and Salary Committee of SMEPA; and that in paragraph 48, reference is made to oversight responsibilities of REA over SMEPA.

Substantive Charges of Formal Complaint

The gravamen of the Formal Complaint is that defendant violated DR 4-101,[B] and § 73-3-35, Mississippi Code of 1972 in that: [IX] in October, 1983, defendant contacted a Field Representative and Field Auditor of the Rural Electrification Association ("REA"), discussed with them problems observed at SMEPA, and gave the auditor a copy of the memorandum; [XI] that after termination of his employment, defendant discussed SMEPA problems with Henry Thomas, general manager of Coast EPA and provided him with copies of the memoranda; and [XIII] that on June 12, 1984[6], defendant filed a Complaint in the Circuit Court of Forrest County, against SMEPA, its general manager, and others (the "Complaint"), seeking "relief from due process violations and other civil wrongs which he had suffered because he was 'honest'," attaching 13 memoranda concerning the internal investigation of SFM.

Grounds of Motion to Dismiss

As we read the Motion to dismiss, its grounds may be summarized as follows:

1. The Formal Complaint should have been dismissed in compliance with the Order entered by the United States District Court for the Eastern District of Kentucky on December 29, 1987.

2. This proceeding is criminal in nature, and defendant has been denied his constitutional right to a speedy trial.

3. Disciplinary action based upon the fact defendant sued SMEPA, disclosing the memorandum and other facts in his

Complaint, impinges upon constitutionally protected rights of freedom of speech, access to the courts, etc.

4. Defendant was under a duty to disclose matters showing the intention of SMEPA to commit a crime.

Discussion

On defendant's first ground, on the record available to us it does not appear that the MSB was a party to the proceeding before the Kentucky District Court, nor that it had been brought before that court by legal process. While we do not doubt the jurisdiction of the Kentucky court to protect witnesses in any proceeding before it from harassment or intimidation, it had no jurisdiction to require the MSB, a non-party, to take affirmative action in Mississippi (pretermitting the question of whether proper grounds existed for enjoining a proceeding in this Court). At any rate, the question is moot since the December 29, 1987, Order has been vacated, and we are not required to rule upon the question of whether the Kentucky court did or did not have jurisdiction to require this proceeding to be dismissed.

We believe this point is not well taken.

Defendant complains that he has not been granted a speedy trial, and that therefore the Formal Complaint should be dismissed.

Although a proceeding, such as this has been termed "quasi criminal" in nature [See: Mississippi State Bar v. Young, 509 So2d 210 (MS, 1987)], defendant is not charged with a crime and is not entitled to a "speedy trial" within the meaning of criminal statutes and the constitution. We think the Rules of Discipline, supra, set forth procedures applicable to this cause, and that they give a reasonably speedy remedy.

There follows a chronology of relevant actions in this case

Action	Date
Defendant filed Complaint against SMEPA, et al.	6/12/86
Complaint filed against defendant with Complaint Committee of Miss. State Bar	7/1/86
Bar complaint served on defendant	7/17/86
Complaint Committee advises MSB there is probable cause for disciplinary action against defendant	10/14/87
Formal Complaint filed	11/13/87
Order entered by United States District Court for the Eastern District of Kentucky in action	

by SFM against SMEPA forbidding intimidation or harassment of defendant, and enjoining MSB to withdraw Formal Complaint 12/29/87
USDC restraining order vacated 3/22/88
Tribunal panel designated 3/28/88
Defendant's motion to dismiss filed 7/7/88

We cannot account for the 454-day delay of the Complaint Committee, acting in the capacity of a grand jury [Rule 7(a), Rules of Discipline (1984)], in finding probable cause or lack thereof. There is simply nothing on the point in the record before us. We note, however, that the finding of probable cause by the Complaint Committee is the equivalent of an indictment. Defendant may not complain of delay occasioned by the order entered by the Kentucky District Court, since he procured it. Whether or not that court had jurisdiction to enter the order, we think the MSB properly refrained from proceeding while it was in effect. Since the Order of December 29th was vacated, the proceeding has moved along within the framework of procedure outlined in the Rules of Discipline.

We believe this point is not well taken.

On the question of whether defendant may be subjected to disciplinary action because of the Complaint filed against SMEPA (with its exhibits), we are not called upon to, and do not, pass upon the question of his judgment, or his evaluation of Kelly v. Mississippi Valley Gas Co., 397 So2d 874 (MS, 1981)[Cf.:Perry v. Sears, Roebuck & Co., 508 So2d 1086 (MS, 1987)]. The question is, did the defendant have the right to file this Complaint, with its attachments under the Rules of Professional Conduct?

DR 4-10[1], [B], has been replaced by Rule 1.6(b), Mississippi Rules of Professional Conduct (1987), which now provides:

(b) A lawyer may reveal such information [relating to representation of a client] to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, . . .

This seems to comport with Rule 502(d)(3), Mississippi Rules of Evidence, which regard applicable as a codification of existing law, notwithstanding its effective date of January 1, 1986. Where

there is an action on the alleged breach of duty by the client to the lawyer, as is the case here, the privilege goes out the window--as we think it should.

If DR 4-10[1], [B], were construed to bar disclosure of information acquired in the course of his employment in an action by a lawyer against his client or former client based upon an alleged breach of duty owed the lawyer, then we would agree such a construction would violate constitutionally protected rights to access to courts. It has been said one "can sue a bishop for bigamy". Within limits imposed by sanctions under Rule 11, a person is free to sue anyone regardless of whether the action is successful or no.

In our view, the attorney-client privilege is a shield, not a sword. Cf.: Covington County v. Page, 456 So2d 739 (MS, 1984)(equitable estoppel); Star Chevrolet Co. V. Green by Green, 473 So2d 157 (MS, 1985)(minor's contract). The confidentiality imposed by the attorney-client privilege was intended to protect the client against disclosure to unauthorized individuals; it was never intended that the client could use the privilege to avoid liability for a breach of duty to his attorney.

We, of course, express no opinion as to the merits of the Complaint filed by defendant in Circuit Court, or whether it states a cause of action. The alleged causes of action necessarily arise out of defendant's employment by SMEPA, and we hold only that SMEPA may not counterattack by seeking to have defendant disciplined for use of evidence acquired in the course of his employment.

This disposes of defendant's contentions numbered 3, above, but does not address MSB's charges in paragraphs IX and XI.

Addressing defendant's last ground, we cannot say with certainty on the record before us that defendant's actions in disclosing contents of the memoranda to third parties was for the purpose of preventing a crime by SMEPA. What crime? What is the relationship of the disclosures complained of to the crime, if any? Did the relationship of persons to whom defendant communicated the memorandum to SMEPA justify disclosure?

If it be true, as alleged in paragraph 51 of the Complaint, that Henry Thomas, general manager of Coast EPA, was also a Director of SMEPA and Chairman of its Wages and Salary

Committee, then it becomes difficult to see how any communication to him would be a disclosure of confidential material to a third party. If it be true, as alleged in paragraph 36 of the Complaint, that SMEPA gave copies of the January 19, 1983, version of the memorandum to representatives of REA present at the regular February 16, 1983, meeting of the SMEPA Board of Directors, then the privilege and/or confidentiality of the memorandum may have been waived as to [REA] at that time. Moreover, the nature and extent of REA's oversight responsibility with respect to SMEPA needs clarification as it may be relevant to the alleged communications between defendant and a Field Representative and Field Auditor of [REA] in October, 1983.

Conclusion

The function of summary judgment is to avoid the necessity of a trial on the merits where there is no dispute over the controlling material facts. If, in fact, there is no dispute over controlling material facts, it would be a waste of time and effort to hold a full-blown trial in this case. Defendant's Complaint, an exhibit to the Formal Complaint, contains allegations which, if true, could be dispositive, but the record before us is incomplete. We feel the pending Motion to Dismiss is premature. Accordingly, the pending Motion to Dismiss will be sustained in part and overruled in part. Counsel for defendant shall prepare and submit an order not inconsistent with the foregoing memorandum opinion for consideration by the Tribunal, which shall allow defendant ten (10) days from entry within which to answer the Formal Complaint, and providing that this matter shall proceed in compliance with the Scheduling Order signed July 20, 1988, without prejudice to defendant's right to file a proper motion under Rule 56 after an orderly development of the material facts.

All judges concur.

Dated: September 26, 1988.

/s/ Larry E. Roberts
Larry E. Roberts,
Presiding Judge for the Tribunal

RECEIVED AND FILED DEC 15 1988

IN THE SUPREME COURT OF MISSISSIPPI

(Before a Complaint Tribunal)

MISSISSIPPI STATE BAR — COMPLAINANT

VERSUS — CONFIDENTIAL MISC. NO. 284

FRANKLIN V. ANDERSON — DEFENDANT

MEMORANDUM OPINION ON

SUMMARY JUDGMENT MOTION

Before the Court is Respondent's Motion for Summary Judgment. Previously this tribunal ruled on Respondent's Rule 12(b) Motion and disposed of his "speedy trial" argument; the allegation of his duty to disclose S.M.E.P.A.'s intent to commit a crime, and position that the formal complaint should have been dismissed pursuant to the Kentucky Federal District Court's order.

Summary adjudication under Rule 56(c) is appropriate only where there exist no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. This tribunal has reviewed the pleadings, exhibits, sworn testimony during the investigatory hearing, answers to interrogatories, admissions and affidavits submitted by both parties in support of and in opposition to the motion. Summary judgment is never a vehicle for resolution of disputed facts and should only be granted with utmost caution. Brown vs. Credit Center, Inc, 444 So.2d 358 (Miss. 1983); Grisham vs. John Q. Long V.F.W. Post, 519 So.2d 413 (Miss. 1988); Smith vs. Sanders, 485 So.2d 1051, 1054 (Miss. 1986). The fact disputes that do exist between the parties are not "material" to the resolution of this motion. For the reasons hereinafter setout, Respondents's motion will be granted.

The substance of the bar's complaint against Anderson can be reduced to two issues:

(1) Did Respondent violate provision DR4-101(B)(2 and 3) of the Code of Professional Responsibility and Section 73-3-35 MCA 1972 by disclosing confidences or secrets of his client S.M.E.P.A. without the client's authority or consent when he filed suit in the Circuit Court of Forrest County, Mississippi? and

(2) Did Respondent violate DR 4-101(B(1, 2, and 3) when he disclosed interoffice memos of S.M.E.P.A. to R.E.A. field auditor, Bill Taylor, in October 1983 or when he likewise

disclosed interoffice memos to Henry Thomas, general manager of Coast Electrical Power Association, and a member of the board of directors of S.M.E.P.A. in December 1983?

The second issue first. It appears clear from the record that when Anderson delivered the interoffice memo to Thomas, Thomas was general manager for C.E.P.A. and also sat as a member of the board of directors of S.M.E.P.A. Was this a "disclosure" within the meaning of DR4-101(B)? Certainly not. He simply disclosed it to his client. Thomas was a director and had a need to know. The disclosure of a memo to R.E.A. field auditor, Bill Taylor, suffers a similar fate. According to Henry L. Thomas's own testimony the R.E.A. field auditor has "the right to audit every piece of paper that lies in our building" . . . "R.E.A. additionally has the right to bring in their own auditors and audit all the records of South Mississippi". . ."when R.E.A. comes in to audit us everything is available." The memo in issue had already been disclosed to the R.E.A. field auditor by Dennis Johnson before Anderson's delivery. The R.E.A., an administration agency of the Department of Agriculture of the Federal Government, has the general responsibility of oversight and supervision of such electrical powers association as S.M.E.P.A. The delivery of the interoffice memos to the R.E.A. field auditor can not be said to be an unauthorized "disclosure" of "secrets" of a client.

Regarding the first issue, it appears that had Anderson's Circuit Court suit been filed after July 1, 1987, he probably would not have been subject to discipline. Rule 1.6 of the Rules of Professional Conduct states

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client.

Rule 1.6 seems to be consistent with Rule 501(d)[3] Mississippi Rules of Evidence. When a suit is filed by a lawyer against his client alleging a breach of duty by the client, the privilege disappears. The attorney-client privilege should be a shield and not a sword. Within the limits imposed under Rule 11 M.R.C.P. and the recently inacted Litigation Accountability Act of 1988, anyone free to file suit regardless of whether or not the suit is a success.

Strict adherence to an outright prohibition of an attorney using a confidence or secret of his client to attach as a necessary exhibit to a civil complaint filed by that attorney against his ex-client would appear to impinge on the right of free access to the courts for redress of grievances. Anderson maintains that Rule 10(d) M.R.C.P. required his attachment of the disputed memos to his complaint for wrongful discharge. It is obvious to this tribunal that that was unnecessary. But, what standard should exist? The most reasonable standard appears to be - "did the plaintiff at the time have the reasonable belief that it was necessary and proper to attach such exhibits to his complaint when he sued his ex-client?["] In the opinion of this tribunal Anderson has met that standard. This is so even though "20/20" hindsight indicates that it was unnecessary to state a cause of action.

Respondent's counsel will prepare a judgment accordingly. Cost are assessed to the Complainant.

Concurred in by all three members of the Complaint Tribunal and DONE this the 14th day of December, 1988.

/s/ Larry E. Roberts
PRESIDING JUDGE

Filed Sep 24 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

FRANKLIN V. ANDERSON
PLAINTIFF

VS. Civil Action No.
SOUTH MISSISSIPPI ELECTRIC 3:93CV-124(W)(N)
POWER ASSOCIATION, ET AL.,
DEFENDANTS

ORDER SUSTAINING THE MISSISSIPPI BAR'S AMENDED MOTION TO DISMISS

CAME ON FOR HEARING before the Court The Mississippi Bar's Amended Motion to Dismiss Plaintiff's Verified Complaint as to The Mississippi Bar, a Defendant; and the Court, having considered the Motion, and being otherwise fully advised in the premises, finds, and is of the opinion that the Amended Motion is well taken and should be sustained.

The Court specifically finds that the Plaintiff, Franklin V. Anderson, failed to exhaust his remedies under Rule 14(b) of the Rules of Discipline for the Mississippi Bar, which provides, in part:

> In an action separate and distinct from the disciplinary proceedings, the attorney may, by petition filed with the Clerk of the [Mississippi Supreme] Court, seek a finding by the Court or its special master on the issue of malicious prosecution or abuse of process or malicious publication to persons not authorized to receive information pertaining to matters arising under [the Rules of Discipline]. If the Court finds or approves a finding by a special master that there appears to or may have been malicious prosecution, abuse of process, or malicious circulation to parties or persons not entitled to receive information pertaining to matters arising under these rules, the Court shall enter its order granting the right to sue . . .

Rule 14(b) of the Rules of Discipline further provides, in part:

> No action shall be instituted prior to the issuance of the order herein provided. (Emphasis added.)

Mr. Anderson failed to avail himself of the provisions of Rule 14(b) of the Rules of Discipline, i.e. obtaining an order from

the Mississippi Supreme Court granting him the right to sue, prior to the institution of this action against The Mississippi Bar. His failure to exhaust the remedy provided requires dismissal of his Verified Complaint as to The Mississippi Bar.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that The Mississippi Bar's Amended Motion to Dismiss Verified Complaint filed in the captioned cause be, and same is hereby sustained; and that the Verified Complaint of Plaintiff, Franklin V. Anderson, as it pertains to The Mississippi Bar, shall be, and the same is hereby dismissed.

SO ORDERED, ADJUDGED AND DECREED, this the 24th day of September, 1993.

/s/ Henry T. Wingate
HONORABLE HENRY T. WINGATE
U.S. DISTRICT JUDGE

FILED OCT 08 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

FRANKLIN V. ANDERSON, an individual PLAINTIFF

VERSUS NO. 3:93CV-124(W)(N)

SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION, a corporation; DIXIE ELECTRIC POWER ASSOCIATION, a corporation; and THE MISSISSIPPI BAR, a quasi-agency of the Supreme Court of the State of Mississippi DEFENDANTS

JUDGMENT OF DISMISSAL WITH PREJUDICE

The Court having entered Findings of Fact and Conclusions of Law dismissing the Complaint of the Plaintiff with prejudice, hereby enters judgment of dismissal with prejudice in favor of South Mississippi Electric Power Association and Dixie Electric Power Association and against the Plaintiff. It is therefore,

ORDERED AND ADJUDGED that this action be and the same is hereby dismissed with prejudice in favor of South Mississippi Electric Power Association and Dixie Electric Power Association and against the Plaintiff with all costs of Court taxed against the Plaintiff.

SO ORDERED AND ADJUDGED, this the 8th day of October, 1993

/s/ Henry T. Wingate
United States District Court Judge

FILED SEP 30 1993

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

FRANKLIN V. ANDERSON, an individual PLAINTIFF

VERSUS NO. 3:93CV-124(W)(N)

SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION, a corporation; DIXIE ELECTRIC POWER ASSOCIATION, a corporation; and THE MISSISSIPPI BAR, a quasi-agency of the Supreme Court of the State of Mississippi DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the court on the motions of Dixie Electric Power Association ("Dixie") and South Mississippi Electric Power Association ("SMEPA") for dismissal pursuant to Federal Rule of Civil Procedure 12(b). The court also has pending the motion for summary judgment filed by plaintiff Franklin V. Anderson ("Anderson"). The court having considered the pleadings and exhibits thereto, as well as the briefs filed by the parties, and having heard oral argument, concludes that the defendants' motions should be granted.

Standard of Review

The defendants' motions are brought pursuant to Federal Rule of Civil Procedure 12(b)(6). As to the grounds for dismissal which rely solely upon the insufficiency of the complaint itself, it is well settled that the complaint may be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conely v. Gibson, 355 U.S. 41, 45-46 (1957). The complaint is construed in the light most favorable to the plaintiff and its allegations are taken as true. Schuer v. Rhodes, 416 U.S. 232, 236 (1974). It is equally clear, however, that the court does not have to accept every allegation in Anderson's complaint as true in considering its sufficiency. The court is not bound to accept Anderson's conclusory allegations, unwarranted deductions from fact, or conclusions of law. Associated Builders, Inc. V. Alabama Power Co., 505 F.2d 97, 100 (5th Cir. 1974). Additionally, the relaxed pleading standard applied to pro se complaints, see Stevenson v. Gaskins, 539 F.2d 1066, 1068 (5th Cir. 1976), is

inappropriate in this particular case because Anderson is an attorney.

Two of the grounds found by the court to require dismissal rely upon documents relating to settlement and dismissal of an earlier state court action filed by Anderson against Dixie and SMEPA. Anderson was aware of these documents and refers to them in framing his complaint, even though he did not attach them to his complaint. Under these circumstances, there is no need to convert the defendants' Rule 12(b) motion into one under Rule 56. Cortec Indus., Inc. V. Sum Holding L.P., 949 F.2d 42, 47-48 (2nd Cir. 1991).

Findings of Fact

The plaintiff filed a complaint against Dixie and SMEPA in 1986 for damages arising from the termination of his employment by SMEPA in 1983 and by Dixie in 1984.[5] That case (herein "the first action") and all claims therein were settled and compromised by all parties, and the first action was dismissed with prejudice to the plaintiff. The settlement and dismissal are detailed and evidenced by the following documents: Mutual Covenant Not to Sue dated October 3, 1986; Stipulation of Dismissal dated October 13, 1986; and Final Judgment of Dismissal with Prejudice dated October 13, 1986, all of which documents are attached to Dixie's Motion as Exhibits "A", "B", and "C". The plaintiff and his attorney executed all three of these documents, and there is no dispute that they are true and correct copies of the originals.

The complaint now before the court on motion to dismiss (herein "the second action") was filed January 11, 1993, in the United States District Court for the Northern District of Alabama and transferred to this court. The court has compared the complaints in the first and second actions and finds a large number of factual allegations to be substantially identical, and in some cases nearly verbatim. These allegations include the events surrounding his employment with SMEPA between 1980 and 1983 and his termination therefrom, and his employment with Dixie in

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[5]The complaint is styled Anderson v. Taylor et al., Civil Action No. 6-86-1913, Circuit Court of Forrest County.

1984 and termination therefrom. Essentially, the plaintiff alleges that a conspiracy arose in connection with his termination at SMEPA and Dixie, and that the defendants have continued the same course of conduct after settlement of the first action. There are no allegations against Dixie that occurred after settlement and dismissal of the first action. Except as noted below, the same is true with respect to SMEPA.

Conclusions of Law

Civil Rights Conspiracy

Count III of the complaint in this action asserts a claim for relief under the federal civil rights conspiracy statute. 42 U.S.C. 1985(3). The court concludes that the complaint fails to state a claim for which relief may be granted because there is no allegation of racial or class-based animus against Anderson. Wong v. Stripling, 881 F.2d 200 (5th Cir. 1989).

Res judicata

Res judicata bars relitigation of claims between the same parties arising from the same nucleus of operative facts. Stevenson v. International Paper, 516 F.2d 103, 108 (5th Cir. 1975); Palmer Exploration Inc. V. Dennis, 759 F.Supp. 332 (S.D.Miss. 1991). This doctrine bars relitigation of claims which plaintiff agrees to dismiss with prejudice pursuant to a consent order. Ruffin v. ITT Continental Baking Co., 636 F.Supp. 857 (N.D.Miss. 1986). The doctrine bars not only every claim the plaintiff actually asserted, but also every claim he could have asserted based upon the same nucleus of operative facts. Palmer, 759 F.Supp. At 335.

The court finds that the judgment of dismissal with prejudice in the first action was rendered by a court of competent jurisdiction, and should be recognized, enforced and given full faith and credit in this court. Further, Anderson was the plaintiff and Dixie and SMEPA were defendants in the first action. Finally, the court finds from a comparison of the complaints filed in the first and second actions that they arose from the same nucleus of operative facts, that is, the events surrounding the termination of Anderson as an employee of Dixie and SMEPA. Accordingly, the doctrine of res judicata applies to this case and bars all claims for relief asserted by Anderson in the second action now before the court that are premised upon events through dismissal of the first action.

Release

The only action of any party that occurred after settlement and dismissal of the first action was the testimony of SMEPA's manager at a Mississippi Bar investigatory hearing in 1987.[6] The court finds this event to be squarely within the contemplation of the settlement agreement signed by Anderson in which he agreed forever to refrain from instituting any claim or cause of action arising from or in any way growing out of his past employment by SMEPA.[7] By signing the settlement agreement, Anderson bargained away his rights to bring a claim against his employer in any way arising from his employment. Inasmuch as the disciplinary complaint was filed before settlement and dismissal of the first

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[6]By separate order the court dismissed the Mississippi Bar from this action due to Anderson's failure to comply with Mississippi Rule of Discipline 14(B). This rule affords immunity from civil action against the Bar and any complainant or witness in disciplinary proceedings. Anderson has failed to petition the Mississippi Supreme Court for an order authorizing suit under the terms of Rule 14. In view of the dismissal on other grounds, the court declines to address whether SMEPA also should be dismissed on this basis.

[7]Anderson maintains that SMEPA agreed to withdraw the disciplinary complaint as part of the settlement agreement. No such undertaking appears in the settlement agreement itself. Also, the court takes judicial notice of Mississippi Rule of Discipline 5.6 which states in pertinent part:

> Complaining Person or Witness
>
> The person signing the complaint is not a party to the proceedings, and the failure or refusal of that person or any witness to cooperate during the investigation shall not be cause for dismissal of the complaint or termination of the investigation or proceedings before a complaint tribunal.

Accordingly, it does not appear that SMEPA as the complaining party had any standing to withdraw the complaint or any influence over prosecution or dismissal of the complaint.

action, and as it concerned Anderson's public disclosure of documents belonging to SMEPA obtained by Anderson while employed by SMEPA, the court concludes that Anderson compromised and settled his right to bring an action against SMEPA arising from the disciplinary proceeding.

The court concludes that the settlement agreement is enforceable according to general contract principles. Rodriguez v. Via Metropolitan Transit Auth., 802 F.2d 126, 129 (5th Cir. 1986). Anderson alleges that he entered into the settlement agreement under duress, but the court finds that Anderson's use of the term does not comport with its legal meaning. Cf. Berry v. Peterson, 887 F.2d 635, 639-41 (5th Cir. 1989). The court finds the settlement agreement was entered into fairly and with full knowledge on the part of Anderson as to its consequences. Anderson will not be permitted to repudiate the settlement agreement whimsically.

Conclusion

For the foregoing reasons, the court finds that the defendant's motions to dismiss are well taken and should be granted. The defendants are directed to submit within ten days an judgment of dismissal with prejudice and assessing costs of court against plaintiff.

SO ORDERED AND ADJUDGED, on the 30th day of September, 1993.

/s/ Henry T. Wingate
United States District Judge

Filed November 27, 1995

Supreme Court of Mississippi

ORAL ARGUMENT REQUESTED

MISSISSIPPI STATE BAR,
COMPLAINANT CONFIDENTIAL
MISCELLANEOUS
V. NOS. 261 AND 284
FRANKLIN V. ANDERSON, PRO SE
DEFENDANT

DEFENDANT'S VERIFIED MOTIONS FOR PUBLIC PROCEEDINGS, FOR RECUSAL, FOR DETERMINATION OF THE CONSTITUTIONALITY OF RULE 14, FOR PERMISSION TO SUE UNDER RULE 14, FOR CHANGE OF VENUE, TO REMOVE SEAL, AND TO COMPEL PRODUCTION

Defendant comes before this court for permission to sue the State of Mississippi, the Mississippi State Bar, and South Mississippi Electric Power Association, for Hobbs Act Conspiracy, Hobbs Act Extortion, Obstruction of Justice, Mail Fraud, Wire Fraud, for which civil relief is available under the Racketeer Influenced Corrupt Organization Act (RICO), for Violation of Federal Civil Rights Under Color of State Law, for malicious prosecution, malicious abuse of process, conspiracy, and violation of state civil rights under color of state law. In support, Defendant shows:

1. Defendant demands open and public proceedings under the First, and Fourteenth Amendments of the United States Constitution , Section 73-3-343 of the Mississippi Code Annotated, and Section 24 of the Mississippi Constitution of 1890, which reads in relevant portion:

> **All courts shall be open; and every person, for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law; and the administration of justice shall not be subject to sale, delay or denial.**

2. Defendant asserts that closed disciplinary proceedings of the Mississippi State Bar when acting under authority of this court violate Section 24 of the Mississippi Constitution of 1890 and due process of the 14th Amendment of the United States Constitution by protecting bar prosecutors from exposure of groundless or abusive charges and concealing access of future accused lawyers to defenses

or exculpatory reasons supporting actions that do not result in public discipline.

3. Defendant asserts that accuser/complainant immunity under Rule 14 of the Mississippi Rules for Professional Discipline is unconstitutional as a denial of the right to petition government for redress of grievances, contrary to the First Amendment of the United States Constitution.

4. Defendant asserts that accuser/complainant immunity under Rule 14 of the Mississippi Rules for Professional Discipline is unconstitutional, as a denial of the property right of personal and business reputation, and the practice of a lawful profession, contrary to the Fifth Amendment of the United States Constitution.

5. Defendant asserts that accuser/complainant immunity under Rule 14 of the Mississippi Rules for Professional Discipline is unconstitutional as a denial of due process, contrary to the Fourteenth Amendment of the United States Constitution.

6. Defendant asserts that accuser/complainant immunity under Rule 14 of the Mississippi Rules of Professional Discipline is unconstitutional as a denial of free speech, contrary to Section 13 of the Mississippi Constitution.

7. Defendant asserts that accuser/complainant immunity under Rule 14 of the Mississippi Rules of Professional Discipline is unconstitutional as a denial of the Defendant's right to petition to open courts, contrary to Sections 24 and 25 of the Mississippi Constitution.

8. Defendant asserts that accuser/complainant immunity under Rule 14 of the Mississippi Rules of Professional Discipline is unconstitutional as a denial of equal protection under the law, contrary to the 14th Amendment of the United States Constitution.

9. Defendant asserts, under *Holt v. Virginia*, 381 U.S. 131 (1965), that every lawyer and judge who maintains, or has maintained, membership in the Mississippi State Bar, or who is related to or associated with any lawyer who maintains, or has maintained, membership or pays, or has paid, dues to said organization, has a direct personal interest or improper financial influence to hear this case on a fair and impartial basis, by authority of *Goldfarb v. State Bar of Virginia*, 421 U.S. 657 (1975), which resulted in every member of the Virginia State Bar being assessed to pay the judgment of $14,000,000 arising from misuse of disciplinary

authority in violation of Federal law; and *Brown v. Vance*, 637 F.2d 272, 276 (5th Cir. Miss. 1981), *citing, inter alia, Bonham's Case*, 77 Eng.Rep. 638 (K.B. 1608), wherein it was held that a judge with a ***direct*** or ***indirect*** financial interest in the outcome of a case cannot afford due process; and additionally *Jenkins v. State*, 570 So.2d 1191 (Miss. 1990), wherein this court wrote that a judge who previously prosecuted a case cannot subsequently afford due process to the same defendant in the same case; and further that due to the elective nature of the office of state judge in Mississippi, and requirement of campaign financing by contributions substantially dependent upon members of the Mississippi State Bar, the Defendant is denied due process under the Fourteenth Amendment of the United States Constitution by being forced to present his claims to this court.

10. Defendant would show that he was prosecuted under DR 4-101(B) for the ***false and obviously groundless charge*** of Theft of Client Secrets by the Mississippi State Bar for:

a. Reporting, ***as required*** by DR 7-102(B)(2) and permitted by DR 4-101(C), ongoing internal corporate misconduct of the General Manager of South Mississippi Electric Power Association to a Director of South Mississippi Electric Power Association.

b. Reporting, ***as required*** by 18 U.S.C. § 4, DR 7-102(B)(1-2) and permitted by DR 4-101(C), ongoing internal corporate misconduct suggesting criminal violations of federal law, *inter alia* 18 U.S.C. §§ 1001 and 1505, of the General Manager and other management officials of South Mississippi Electric Power Association, a federally financed, mortgaged and regulated electric cooperative, to agents of the Federal government authorized by contract and Federal law to receive such reports.

c. Filing a lawsuit, in exercise of the federal and state constitutional rights of free speech, petition of government and due process, before the Circuit Court of Forrest County and providing evidence to support said lawsuit ***as permitted*** under Mississippi Rules of Evidence 501 and 502, ***which rules were adopted by this Court and in effect by its order in all State Courts at all relevant times to this case.***

11 Defendant would show that the United States Supreme Court has written:

> **It is the duty and the right, not only of every peace officer of the United States, but of every citizen, to assist in prosecuting, and in securing the punishment of, any breach of the peace of the United States. It is the right, as well as the duty, of every citizen, when called upon by the proper officer, to act as part of the posse comitatus in upholding the laws of his country. It is likewise his right and his duty to communicate to the executive officers any information which he has of the commission of an offense against those laws; and such information, given by a private citizen, is a privileged and confidential communication, for which no action of libel or slander will lie, and the disclosure of which cannot be compelled without the assent of the government. . .**
>
> **The right of a citizen informing of a violation of law, like the right of a prisoner in custody upon a charge of such violation, to be protected against lawless violence, does not depend upon any of the amendments to the constitution, but arises out of the creation and establishment by the constitution itself of a national government, paramount and supreme within its sphere of action. . . . Both are, within the concise definition of the chief justice in an earlier case, "privileges and immunities arising out of the nature and essential character of the national government, and granted or secured by the constitution of the United States. . . ."**
>
> **The right of the private citizen who assists in putting in motion the course of justice, and the right of the officers concerned in the administration of justice, stand upon the same ground, just as do the rights of citizens voting and officers elected. . . . The power in either case arises out of the circumstances that the function in which the party is engaged, or the right which he is about to exercise, is dependent on the laws of the United States. In both cases it is the duty of government to see that he may exercise**

this right freely, and to protect him from violence while so doing, or on account of so doing. This duty does not arise solely from the interest of the party concerned, but from the necessity of the government itself, that its service shall be free from the adverse influence of force and fraud practiced on its agents. . . .

The necessary conclusion is that it is the right of every private citizen of the United States to inform a marshal of the United States or his deputy of a violation of the internal revenue laws of the United States; that this right is secured to the citizen by the constitution of the United States; and that a conspiracy to injure, oppress, threaten, or intimidate him in the free exercise or enjoyment of this right, or because of his having exercised it, is punishable. . . . *In Re Quarles*, 158 U.S. 532, 39 LEd 1080, 15 SCt 959 (1895)

Further Supreme Court opinions amplifying *Quarles* are:
1. *In re Debs*, 158 U.S. 564 (1895) ([T]he power to enforce its laws and execute its functions in all places does not derogate from the power of the state to execute its laws at the same time and in the same places. The one does not exclude the other, except where both cannot be executed at the same time.)
2. *Twining v. New Jersey*, 211 U.S. 78 (1908) (In a state prosecution for criminal conduct-privileges and immunities are such as arise out of the nature and essential character of the national government, or are specifically or secured to all citizens or persons by the Constitution of the United States, and include the right to inform United States authorities of violations of law.)
3. *Rakes v. United States*, 212 U.S. 55 (1909) (Constitutionality of statute protecting persons in free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States is "long put to rest".)
4. *Colgate v. Harvey*, 296 U.S. 404 (1935) (Under the 14th Amendment the simple inquiry is whether the privilege

claimed is one which arises in virtue of national citizenship: If the privilege be of that character, no state can abridge it.)
5. *Ashton v. Cameron County*, 298 U.S. 513 (1936) (The federal and state government cannot act in concert through legislation to abridge the privileges and immunities of their citizens.)
6. *Hague v. Committee for Industrial Organization*, 307 U.S. 496 (1939) (Uncontrolled suppression of the privilege of free expression cannot be allowed under the guise of the official duty to maintain order in connection with the exercise of the privilege.)
7. *United States v. Classic*, 313 U.S. 299 (1941) (A state cannot by legislation interfere with the rights secured by the federal Constitution; and those rights, including communication with lawful authority, which arise prior to the 14th and 15th Amendments, are secured not only against the actions of the state, but also individuals.)
8. *Screws v. United States*, 325 U.S. 91 (1945) (If it is valid to assure the rights "plainly and directly" secured by the other provisions, it is equally valid to protect those "plainly and directly" secured by the Fourteenth Amendment, including the expressly guaranteed rights not to be deprived of life, liberty or property without due process of law.)
9. *United States v. Williams*, 341 U.S. 70 (1951) (The right to inform federal authorities of illegal conduct is protected against individual as well as state action.)
10. *Collins v. Hardyman*, 341 U.S. 651 (1951) (The Fourteenth Amendment in isolation does not secure individuals against the wrongs of other individuals; only against the wrongs of the states.)
11. *Roviaro v. United States*, 353 U.S. 53 (1957) (The purpose of the informer's privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials, and, by preserving their anonymity, encourages them to perform that obligation.)

12. *United States v. Price*, 383 U.S. 787 (1966) (Private persons, jointly engaged with state officials in prohibited action, are acting "under color of law" when subjecting any inhabitant to deprivation of rights, privileges or immunities secured or protected by the Constitution. It is enough that a person willfully participates in joint activity with the State or its agents.)
13. *United States v. Guest*, 383 U.S. 745 (1966) (The Bill of Rights, designed to protect personal liberties, was directed at rights against governmental authority, not other individuals; there is a narrow range of rights protected against individuals which have been read into the Constitution, including the right of federal citizenship to inform federal officials of violations of federal law.)
14. *McCray v. Illinois*, 386 U.S. 300 (1967) (Revelation of an informant's identity ends his usefulness to the government and discourages others from aiding in law enforcement.)
15. *Adickes v. S.H. Kress*, 398 U.S. 144 (1970) (In an action against private defendants who complained to law enforcement authority in order to violate the civil rights of the accused, the complaint in retaliation is not subject to informant's immunity and privilege, even though the informant's right is otherwise strongly protected.)
16. *Oregon v. Mitchell*, 400 U.S. 112 (1970) (The right to vote in federal elections, as the right to inform federal authority, is a privilege and immunity of national citizenship.)
17. *Griffin v. Breckenridge*, 403 U.S. 88 (1971) (42 U.S.C. § 1985(3) reaches not only state involved, but also purely private conspiracies to deprive others of federal civil rights.)
18. *Lindsey v. Normet*, 405 U.S. 56,88 (1972) ("We have held that the right to complain to public authorities is constitutionally protected.")
19. *Sugarman v. Dougall*, 413 U.S. 634 (1973) (There are certain attributes peculiar to the status of federal citizen which cannot be limited by the state.)
20. *United States v. New York Telephone Company*, 434 U.S. 159 (1977) (The conviction that private citizens have a duty to provide assistance to law enforcement officials when

it is required is by no means foreign to our traditions: As in the days of Edward I, the citizenry may be called upon to enforce the justice of the state, not faintly and with lagging steps, but honestly and bravely and with whatever implements and facilities are convenient and at hand. It is the duty of every citizen to assist in prosecuting, and in securing the punishment of, any breach of the peace of the United States.)

21. *Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600 (1979) (Actions for deprivation of rights are not based on the statutes allowing them, but on the right of the citizen to protection. All rights, whether created by treaty, by statute, or by regulation are "secured" by the Supremacy Clause.)

22. *Great American Federal Savings & Loan v. Novotny*, 442 U.S. 366 (1979) (Federal protection encompasses the right to communicate with law enforcement authority.)

23. *Sure-Tan, Inc. v. National Labor Relations Board*, 467 U.S. 883 (1984) (A protected informant cannot be attacked by his subject informing upon him in retaliation: If the reason asserted for making the report is pretextual, the fact that the action taken is legal or even praiseworthy is not controlling.)

12. Defendant would show that DR 7-103 adopted, in effect and approved by this Court at all relevant times to this matter reads:

> **Performing the Duty of Public Prosecutor or Other Government Lawyer**
>
> **(A) A public prosecutor or other government lawyer *shall not institute or cause to be instituted criminal charges* when he knows or it is obvious that the charges are not supported by probable cause.**
>
> **(B) A public prosecutor or other government lawyer in criminal litigation *shall make timely disclosure* to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.**

13. Defendant would show that DR 7-106(C)(1) adopted, in effect and approved by this Court at all relevant times to this matter reads in relevant portion:

Trial Conduct

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

14. Defendant would show that DR 7-109 adopted, in effect and approved by this Court at all relevant times to this matter reads in relevant portion:

Contact with Witnesses.

(A) A lawyer *shall not suppress* any evidence that he or his client has a legal obligation to reveal or produce.

(B) A lawyer *shall not* advise or *cause* a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

15. Defendant would show that relevant portions of DR 7-102(B) adopted, in effect and approved by this Court at all relevant times to this matter read:

A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal *shall* promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he *shall* reveal the fraud to the affected person or tribunal.

(2) A person other than his client has perpetrated a fraud upon a tribunal *shall* promptly reveal the fraud to the tribunal.

16. Defendant would show that relevant portions of Mississippi Rules of Evidence 501 and 502, adopted, in effect and approved by this Court at all relevant times to this matter read:

Rule 501. Privileges Recognized Only As Provided

Except as otherwise provided by the United States Constitution, by these rules, or by other rules applicable

in the courts of this state to which these rules apply, no person has a privilege to:

(1) Refuse to be a witness;

(2) Refuse to disclose any matter;

(3) Refuse to produce any object or writing; or

(4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

Rule 502. Lawyer-Client Privilege

(b) General Rule of Privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client. . .

(d) Exceptions. *There is no privilege under this rule:*

(1) Furtherance of Crime or Fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(3) Breach of Duty by a Lawyer or Client. As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer;

17. Defendant would show that Michael B. Martz, the General Counsel of the Mississippi State Bar, published in the Mississippi Lawyer, the official publication of the Mississippi State Bar, in the September-October, 1987, edition, prior to the same General Counsel filing formal charges against the Defendant the following admission in the scope and line of his authority:

It should be noted that the option of a lawyer to disclose information necessary to prevent crime exists regardless of the seriousness of the proposed crime, whether it be a felony or a misdemeanor.

18. Defendant would show that Michael B. Martz, the General Counsel of the Mississippi State Bar, published in the Mississippi Lawyer, the official publication of the Mississippi State Bar, in the July-August, 1987, edition, prior to the same General Counsel filing formal charges against the Defendant the following admission in the scope and line of his authority:

[N]o lawyer may be subject to discipline *when he acts within the bounds of professional discretion* ("may") and .

. . the aspirational term "should" as used in the Comments [to the newly adopted Rules of Professional Conduct] does not impose additional obligations to those already enumerated in the Rules, but only provides guidance for compliance with the Rules. . .

19. Defendant would show that at the time Henry Thomas, General Manager of South Mississippi Electric Power Association, filed his complaint against the Defendant to the Mississippi State Bar, attaching to said complaint copies of allegedly confidential documents, he also, ***on the very same day***, obtained an order from the Circuit Court of Forrest County Mississippi, sealing the court file containing the same allegedly confidential documents and maintaining said file in the personal possession of the judge, which order prohibited *inter alia* the Defendant from speaking "to representatives of the Mississippi State Bar."

20. Defendant would show that prior to obtaining the order of the Circuit Court of Forrest County, Mississippi, prohibiting Defendant from communicating with the Mississippi State Bar *and federal litigants and courts*, and prior to filing his complaint against the Defendant to the Mississippi State Bar, Henry Thomas, General Manager of South Mississippi Electric Power Association filed or caused to be filed in the United States District Courts of the Southern District of Mississippi, Hattiesburg Division, and Eastern District of Kentucky, London Division, THREE sworn statements identifying Defendant as a person "who will necessarily testify" before those federal courts.

21. Defendant would show that the Mississippi State Bar was aware of and adopted the fraudulent actions of Henry Thomas, General Manager of South Mississippi Electric Power Association, by investigating, formally charging, and prosecuting groundless charges against the Defendant, which prosecution resulted in his professional destruction, his financial ruin, and the disintegration of his family.

22. Defendant would show that this Court was fully informed of the ongoing investigation and prosecution of groundless charges of the Mississippi State Bar and adopted said prosecution as an official act of the State of Mississippi, by refusing to issue a *writ of prohibition* in this case April 29, 1987.

23. Defendant would show that he sought protection as a Federal Witness from the United States District Court for the Eastern

District of Kentucky, London Division, and that the Mississippi State Bar *voluntarily appeared and submitted to the jurisdiction of the federal court* by answering Defendant's motion *and* by filing its own motions, *including the motion of its general counsel Michael B. Martz for admission* ***pro hac vice without the requirement of local counsel***.

24. Defendant would show that the United States District Court for the Eastern District of Kentucky, London Division, issued an order finding the prosecution of the Defendant by the Mississippi State Bar to violate federal law, and enjoining the Mississippi State Bar to dismiss the pending charges and refrain from prosecuting the Defendant. Said order was never appealed.

25. Defendant would show that after Defendant was subject to the protection of the federal court order, the parties to said suit, South Mississippi Electric Power Association and Sandy Fork Mining Company, settled their claims and moved to dismiss the action pending before the United States District Court for the Eastern District of Kentucky, London Division.

26. Defendant would show that the Mississippi State Bar in concert with South Mississippi Electric Power Association thereupon moved to reconsider the order of the United States District Court for the Eastern District of Kentucky, London Division, which motion to reconsider was granted, and injunction vacated, on the sole ground of settlement of the pending suit in which Defendant was named as a federal witness.

27. Defendant would show that the prosecution of the Mississippi State Bar continued, notwithstanding the final and binding determination, under *Elgin v. Barrett*, 213 F.2d 776 (5th Cir. 1954), of a federal court with nationwide jurisdiction to enforce its orders, under *Reich v. United States*, 239 F.2d 134 (1st Cir. 1956), *cert den*, 352 U.S. 1004 (1956), that said prosecution was fraudulent and illegal under federal law.

28. Defendant would show that after approximately 969 days of the disciplinary equivalent of arrest, he was ***totally exonerated of any wrongdoing*** by a Complaint Tribunal appointed by this Court to hear and decide the charges against him. Said ruling was not appealed by the Mississippi State Bar.

29. Defendant would show that he has sought relief in the federal courts, and that the Mississippi State Bar argued before the United

States District Court for the Southern District of Mississippi, Jackson Division, that, notwithstanding the dismissal of charges against the Defendant, ***there was and is a continuing disciplinary proceeding against the Defendant which justifies the denial of access to federal courts to seek relief under federal law***. *See, e.g.*, Affidavit of Michael B. Martz etc., further described herein at paragraph 47(b) and attached hereto as Exhibit I(Tab B). Defendant asserts that since the dismissal of the charges by the Complaint Tribunal he has been served with no disciplinary complaint or action of any form by the Mississippi State Bar.

30. Defendant would show that the United States District Court for the Southern District of Mississippi, Jackson Division, Honorable Henry Wingate, past or present member of the Mississippi State Bar, presiding, dismissed, pursuant to Rule 14, Defendant's suit under federal law for failing to obtain permission from this state court to sue its agency and conspirators, for ***twice judicially determined*** violations of federal law and rights.

31. Defendant asserts that under Article 6 Clause 2 of the United States Constitution, this court is without authority to deny any person, lawyer or not, the right to present his federal law claims to the courts. Defendant would further show that this Court has received guidance from the United States Supreme Court in *NAACP v. Claiborne Hdw*, 458 U.S. 886 (1983), *citing, New York Times v. Sullivan*, 376 U.S. 254 (1964), that the State of Mississippi cannot enforce a rule of law, either common or statutory, that interferes with Federal Constitutional rights. The United States Supreme Court has also written in *Brotherhood of Railway Trainmen v. State Bar of Virginia*, 377 U.S. 1 (1963), that a state cannot use its disciplinary authority over attorneys to violate their federal Constitutional rights. In addition, the Court has written of a death sentence, not unlike the civil death sentence fraudulently and groundlessly imposed on the Defendant herein:

> **We are not impressed by the argument that law enforcement methods such as those under review are necessary to uphold our laws. The Constitution proscribes such lawless means irrespective of the end. And this argument flouts the basic principle that all people must stand on an equality before the bar of justice in every American Court. Today, as in ages past, we are not**

without tragic proof that the exalted power of some governments to punish manufactured crime dictatorially is the handmaid of tyranny. Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement. Due process of law, preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death. No higher duty, no more solemn responsibility, rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution - of whatever race, creed or persuasion. *Chambers v. State of Florida*, 309 U.S. 227,240-241 (1940).

32. Defendant would show that this court has written: **Sovereign immunity will not protect a political subdivision when there has been a violation by the subdivision of an individual's constitutional rights. . . [T]he courts are open to provide a remedy against the sovereign or any of its subdivisions. Otherwise . . . the Mississippi Constitution would be meaningless. . . . Tucker v. Hinds County, 558 So.2d 869 (Miss. 1990).**

33. Defendant would show that the United States Supreme Court has written in *Goldfarb v. State Bar of Virginia* , 421 U.S. 657 (1975) that where a state bar association uses its disciplinary authority to force violation of federal law, sovereign immunity is thereby waived under the Sherman Anti Trust Act, 15 U.S.C. 1 *et seq.*, enacted under the Commerce Clause, and a suit for damages is allowed.

34. Defendant would show that the actions of the Mississippi State Bar and its conspirator South Mississippi Electric Power Association violate the following predicate acts under the Racketeer Influenced Corrupt Organizations Act (RICO), for which civil relief is afforded in 18 U.S.C. § 1964(c) according to *Sedima v. Imrex*, 473 U.S. 479 (1985):

a. **Mail Fraud**, in that the Mississippi State Bar made or caused to be made through the United States Mail one or

more communications in furtherance of a fraudulent purpose, to-wit: obstruction of justice before a federal court, contrary to 18 U.S.C. § 1341.

b. **Wire Fraud**, in that the Mississippi State Bar made or caused to be made over the interstate telephone system one or more communications in furtherance of a fraudulent purpose, to-wit: obstruction of justice before a federal court, contrary to 18 U.S.C. § 1343.

c. **Obstruction of Justice**, in that the Mississippi State Bar, acting in knowing concert with South Mississippi Electric Power Association, its agents, employees, directors and attorneys, and the Circuit Court of Forrest County, Mississippi, engaged in conduct determined by the United States District Court for the Eastern District of Kentucky, London Division, to be for the illegal purpose of harassing, oppressing and intimidating Defendant, a federal witness, contrary to 18 U.S.C. § 1503.

d. **Hobbs Act Extortion** affecting interstate commerce, to deplete the resources of the Defendant through a groundless and fraudulent prosecution, using the official authority of the State of Mississippi, with the underlying purposes of denying him the right to present his claims in an impartial court, and ***preventing him from performing his Constitutional duty*** to testify freely in federal court as to the wrongdoing of the management of his former corporate client, contrary to 18 U.S.C. §1951 *et seq.*

e. **Hobbs Act Conspiracy** affecting interstate commerce, to deplete the resources of the Defendant through an agreement between or among the Mississippi State Bar and South Mississippi Electric Power Association, their respective agents, officers, directors, employees and attorneys, for the unlawful purposes described heretofore, and with the overt acts in performance of that agreement as described heretofore, and others.

35. Defendant would show that under federal and state law, accuser/complainant immunity does not apply when the complaint is made for the purpose of fraud or violation of federal civil rights, or in retaliation for the accused acting to ***perform Constitutional***

Duties and exercise Constitutional rights under federal and state law.

36. Defendant would show that his conduct has been judicially determined, ***twice***, to be in compliance with all federal and state law. Wherefore Premises Considered, Defendant makes the following motions to this Court, and for such discretionary relief as the court may award:

Motion to Recuse

37. Defendant adopts and re-alleges paragraphs 1 through 36 and moves this court to recuse and prohibit any person from sitting in judgment of this case who participated in denying Defendant's Motion for a Writ of Prohibition in 1987, or who is, or has been, a member of the Mississippi State Bar, or who is related to a member thereof, or who is associated with or otherwise subject to the influence or interest of any member thereof.

Motion to Determine that Rule 14 is Unconstitutional

38. Defendant adopts and re-alleges paragraphs 1 through 37 and moves that this Court determine that accuser immunity and secret proceedings under Rule 14 is either unconstitutional on its face or as it applies in this case.

Motion for Permission to Sue Under Rule 14

39. Defendant adopts and re-alleges paragraphs 1 through 38 and moves for permission to sue the State of Mississippi, the Mississippi State Bar, South Mississippi Electric Power Association, any persons who aided, abetted, counseled or acted in furtherance of the wrongful actions complained of in this case, and any person or entity otherwise determined by this court to be legally answerable therefor.

Motion for Change of Venue

40. Defendant adopts and re-alleges paragraphs 1 through 39 and moves for permission to bring his suit for the claims herein raised at his option in the United States District Court, Southern District of Alabama, or Circuit Court of Mobile County, Alabama.

41. Defendant would show that Mobile County, Alabama, is the residence of the Defendant at this time and that the Mississippi State Bar collects dues from, and claims disciplinary authority over, numerous attorneys, active and inactive, including the Defendant, who reside in Mobile County, Alabama.

42. Defendant would show that under Alabama "long arm" jurisdiction the courts of Alabama have jurisdiction over this case

and defendants and can serve as a proper, impartial forum, having concurrent state and federal jurisdiction to hear RICO claims.

Motion to Remove Seal

43. Defendant adopts and re-alleges paragraphs 1 through 42, and would further show that the Circuit Court of Forrest County has sealed the file of the Defendant's action which was the origin of the fraudulent bar complaint addressed in this action. Said seal has been substantially compromised by the actions of Henry Thomas in attaching as exhibits to his bar complaint all documents falsely alleged by him to be protected by attorney-client privilege. Said file further contains other documents relevant to the fraud perpetrated upon the Defendant in this proceeding. Defendant moves for an order un-sealing said record and requiring full and public disclosure of its contents.

Motion to Compel Production of Documents and Records

44. Defendant adopts and re-alleges paragraphs 1 through 43 and moves to compel production for inspection and copying all records of any nature or form in the possession of the Mississippi State Bar or any attorney acting on its behalf pertaining to the Defendant, dating from November 1, 1980 to present, including but not limited to all reports, memoranda, minutes of meetings, transcripts, letters, notes or records of telephone conversations, or other recorded information produced or acquired in connection with or in furtherance of any investigation of or the prosecution of the Defendant.

45. Defendant would show that under Rule 502 of the Mississippi Rules of Evidence said information is not privileged.

46. Defendant would show that no privilege exists under federal law for said documents and records:

> **The privilege takes flight if the relation is abused. A client who consults an attorney for advice that will serve him in the commission of a fraud will have no help in the law. He must let the truth be told. *Clark v. United States*, 289 U.S. 1, 15 (1933).**

47. In support of the foregoing motions, defendant adopts as evidence and incorporates as Exhibit I his:

a. Amended Verified Motion to Compel Production of Documents from Defendant Mississippi State Bar,

b. Affidavit of Michael B. Martz of the Mississippi Bar in Support of the Mississippi Bar's Amended Motion to Dismiss and in Opposition to Plaintiff's Motion for Summary Judgment,
c. Motion, Brief, Affidavit and Supplemental Affidavit in Support of Motion for Summary Judgment, and all exhibits A1 through A22 thereto,
d. Verified Motion to Remove Seal and Compel Production of Documents, Response of South Mississippi Electric Power Association to Plaintiff's Motion to Remove Seal and Compel Production of Documents, Verified Rebuttal to Response of South Mississippi Electric Power Association to Plaintiff's Motion to Remove Seal and Compel Production of Documents, and all exhibits C1 through C12 thereto.

All said documents have been previously filed and served before the United States District Courts for the Northern District of Alabama and Southern District of Mississippi.

State of Alabama, County of Mobile

Personally appeared before me the undersigned authority in and for said jurisdiction Franklin V. Anderson, who being first identified and placed under oath executed the foregoing Verified Motions this date.

dated 11/20/95

/s/ Franklin V. Anderson
Franklin V. Anderson
/s/ Angela Graves
Notary Public
commission 10-16-96

Filed JAN 29, 1996

Supreme Court of Mississippi

ORAL ARGUMENT REQUESTED

AN ATTORNEY — CASE NO. 95-1230

V.

THE STATE OF MISSISSIPPI — ENCOMPASSING

ALSO STYLED AS

MISSISSIPPI STATE BAR, — CONFIDENTIAL

COMPLAINANT — MISCELLANEOUS

V. — NOS. 261 and 284

FRANKLIN V. ANDERSON, PRO SE

DEFENDANT

VERIFIED MOTION FOR ENTRY OF DEFAULT AND JUDGMENT BY DEFAULT

Movant requests judgment by default on all motions pending before this Court.

1. Movant filed this proceeding November 27, 1995 and personally delivered copies thereto to all defendants and the United States Attorney and, through the United States Mail, to the Attorney General of the United States, as stated in the appended Certificate of Service.

2. No person has come forward to plead, answer or otherwise defend this action within the time allowed by this Court's rules.

3. I am entitled to proceed with my claims in open court.

4. My previous pleadings and exhibits before this Court are incorporated by reference.

Respectfully presented January 26, 1996.

/s/ Franklin V. Anderson

Franklin V. Anderson

State of Alabama

County of Mobile

Personally appeared before me the undersigned authority in and for said county and state Franklin V. Anderson who being first identified and placed under oath executed the foregoing Verified Motion for Judgment by Default this date.

January 26, 1996 — /s/ Ellen Eagleson

Notary Public

My commission expires Aug 29, 1999

Certificate of Service

I certify that no person has come forward to answer or defend the above action within the time allowed by this Court's rules and that such failure deprives said persons of the right to service of this motion.

/s/ Franklin V. Anderson
Franklin V. Anderson
P.O. Box 40633
Mobile AL 36640
(334) 433-5112